

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

REDDY VIJAY ANNAPPAREDDY)
Plaintiff,) Trial Day 4
vs.) Civil No.
PAM ARNOLD, et al.) 18-cv-3012-JFA
Defendants.) Baltimore, Maryland
June 5, 2023
9:03 a.m.

THE ABOVE-ENTITLED MATTER CONTINUED FOR
BENCH TRIAL
BEFORE THE HONORABLE JOSEPH F. ANDERSON, JR.

A P P E A R A N C E S

On Behalf of the Plaintiff:

JOSHUA D. GREENBERG, ESQUIRE
KOBIE FLOWERS, ESQUIRE

On Behalf of the Defendant United States of America:

MATTHEW P. PHELPS, ESQUIRE
MOLISSA H. FARBER, ESQUIRE
LAWRENCE EISER, ESQUIRE

Also Present:

Reddy Vijay Annappareddy

(Computer-aided transcription of stenotype notes)

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INDEXPLAINTIFFS' WITNESSES:PAGE:

Vipinkumar Patel	
Direct by Mr. Flowers	23
Cross by Mr. Phelps	52
Redirect by Mr. Flowers	64
Pragnaben Patel	
Direct by Mr. Flowers	67
Cross by Mr. Phelps	78
Redirect by Mr. Flowers	81
Jed Smith (cont.)	
Direct by Mr. Greenberg (cont.)	92
Cross by Mr. Phelps	108
Redirect by Mr. Greenberg	148
Recross by Mr. Phelps	168
Pam Arnold	
Direct by Mr. Greenberg	193
Cross by Mr. Eiser	210

1 (9:03 a.m.)

2 **THE COURT:** Good morning, please be seated.

3 We're missing Mr. Greenberg. He's in the building, I
4 assume?

5 **MR. FLOWERS:** Yeah, yeah, he's on his way, Your Honor.
6 I do apologize for our tardiness.

7 **THE COURT:** No problem. No problem.

8 **MR. FLOWERS:** As the Court might be aware, we just
9 filed something this morning --

10 **THE COURT:** We saw it. We had the first three-fourths
11 of it. I'm not going to rule on that first thing, anyway.

12 **MR. FLOWERS:** Very well, Your Honor.

13 Also, for opposing Counsel, I have copies, if anyone is
14 interested, just because we just filed it.

15 **MS. FARBER:** I'll take one, thank you.

16 **MR. GREENBERG:** My apologies, Your Honor.

17 **THE COURT:** We have received briefs over the weekend
18 on the admissibility Exhibits 71 and 59 that relate, generally
19 speaking, to evidence that was required post-Lating affidavit.
20 I do not intend to rule on that this morning. I need to read
21 off these briefs, look at the law, and I'll give you a decision
22 sometime today so we know how to proceed.

23 Secondly, we need to talk about scheduling. First of all,
24 in my defense, last night when I pointed out I was somewhat
25 exasperated that two government witnesses were in Europe, I was

1 told that it was my fault because I moved the jury trial, the
2 date. The reason the date was moved, we really said April.
3 Then we had to get briefing on summary judgment. Both parties
4 wanted extensions of time for the briefing, and I gave them.
5 Then the Plaintiff wanted to file a sur-reply, and I gave that.
6 And that pushed us past the window for jury selection here in
7 Baltimore. I was given only certain days I could pull a jury.
8 Once we got past that window, I had no choice but to reschedule
9 for May 31st. So that's why the trial was delayed. Okay.

10 Now, let's talk about what we can do to make this work.

11 Mr. Greenberg, I still don't understand what you would
12 prefer to do. I can come back, not next week -- not the week
13 after next, but I can come back pretty much any time in July to
14 finish this case. If you want to pick out a week in July for
15 me to come back and keep things in a logical order, we can do
16 that.

17 But I don't understand what your problem is about rebuttal
18 witnesses, exactly.

19 **MR. GREENBERG:** Your Honor, first of all, I apologize
20 for being a bit late. I was responding to the brief they filed
21 at 10:10 last night. And Your Honor had only discussed this in
22 court, not to file a brief, but after they filed a brief, I
23 thought we had to. So I apologize.

24 Now, Mr. Flowers is going to speak to the rebuttal issue
25 and scheduling.

1 **THE COURT:** All right. Let me say one thing. Lawyers
2 frequently misunderstand what is meant by the term "rebuttal
3 case." Technically speaking, it is supposed to be responding
4 to new issues raised by the opponent during their case in
5 chief. Most lawyers think, erroneously, that it means a second
6 chance to put your basic case before the jury, and that's not
7 correct.

8 Typical example, just to pick a hypothetical case, has
9 nothing to do with this trial. A bank executive is on trial
10 for bank embezzlement. The Government puts up its evidence of
11 guilt. We turn to the Defendant's case in chief, and the bank
12 executive gets on the stand that says, "I was transferring
13 funds on six days, that can't be true because I was out of the
14 office three of those days. Here's my date book. I was not
15 even in the building." That's a new issue. We go back to the
16 Government's case in reply or in rebuttal, they bring in the
17 technician who has the card -- who manages the computer that
18 records the card swipes to who entered the building when, and
19 it shows that on three occasions, the Defendant came in the
20 building after-hours. That's responding to new matter.

21 So that's what we're talking about. I'm somewhat
22 concerned that the Plaintiffs are using the word rebuttal --
23 "case in rebuttal," to mean that you can just go into
24 everything the Defendant has brought out in its case in chief,
25 and that's just not the rule.

1 So I don't understand the need for unlimited rebuttal
2 testimony.

3 So with that, we have the Juneteenth holiday coming up.
4 We have the 4th of July holiday coming up. I have my Fourth
5 Circuit Judicial Conference that I'm required to attend, and I
6 have to be on the program, that runs from the 28th of June to
7 the 30th of June. You put all that together, plus I've got
8 jury selection in Columbia on the 11th, I'm available any time
9 after July 12th to the end of the month of July to come back,
10 Wednesday July 12th through Friday July 28th. So if I can come
11 back up here sometime during that window, can we just proceed
12 in a normal fashion?

13 **MR. FLOWERS:** I think so, Your Honor. We can just
14 move forward in the normal fashion. You know, our concern,
15 which, I think, joins hands with the Court's concern, is that
16 we're not here to counter everything that the defense has said.
17 We certainly are here to counter evidence that they are now
18 putting on to say that, you know, there was probable cause, to
19 say that their agent acted without malice.

20 The concern, Judge Anderson, is that from the defense's
21 opening, they said very clearly, Mr. Annappareddy cannot take
22 the stand and say he's innocent.

23 Well, we thought this case was a very, very focused,
24 narrow case on two of four issues of --

25 **THE COURT:** I agree with you on that. He doesn't have

1 to prove his innocence. His guilt/innocence is not before me
2 at all, in no way, shape, or form. We're looking at probable
3 cause, yes or no, in the Lating affidavit. It's that simple.

4 **MR. FLOWERS:** I agree with Your Honor, and Your
5 Honor's ruling makes it crystal clear. Yet, evidence has come
6 into the Court that really goes to whether this man was
7 innocent or not. Evidence, for example, the Harris 302, right.
8 And the character assassination that the defense is putting on
9 of Mr. Annappareddy to suggest not only he's a bad person, but
10 also he was guilty of Medicaid fraud.

11 So we're in this situation of saying, one, not only do we
12 have to put on character evidence to go against this, they
13 literally called him someone who has a -- basically, a
14 propensity for lying, in their latest brief, right. I forget
15 exactly what the term, what the phrase was, but the take-home
16 point was all Mr. Annappareddy does is lie, right? So at the
17 very minimum, we've got to rebut that.

18 There's also, again, this idea that what -- what
19 Mr. Annappareddy was engaged in was just this wholesale fraud,
20 right.

21 They've gone in over and over again talking about how, for
22 example, Lisa Ridolfi was someone that, hey, you know, we could
23 follow what she had to say it. They've said that Dennis
24 Tokofsky, there were no issues there.

25 The agents have gotten up on the stand and given character

1 evidence for themselves. You know, we heard Agent Mosley talk
2 about how Agent Lating was, you know, was a very fine agent,
3 back and forth. All of that stuff, we've got to rebut.
4 Because we've got to show that both Mosley and Lating engaged
5 in malice, right.

6 And it would be one thing if they had cabined this case to
7 July 23rd, 2013, and looked backward. What they have done, and
8 I think 302 is a good example of that, the Harris 302, is that
9 they're going from July 23rd, 2014, and looking forward.

10 So that is why, Your Honor, we've got to put on a rebuttal
11 case. We're not here to rebut every single thing that they
12 have put on their defense. I want to explain to the Court that
13 we have trimmed ourselves very much, based on what I'll call
14 the law of the case and how the Court has ruled. Many times,
15 there were many things that we wanted to object to, but given
16 where the Court is, we cabined that, we did not.

17 Likewise, with the rebuttal case, you sent a very clear
18 message, Judge Anderson, that we do not have the right to rebut
19 every single thing that the Government had said.

20 **THE COURT:** No, wait a minute. I didn't say that. I
21 just said you're limited to new matter brought out by the
22 Government.

23 **MR. FLOWERS:** Very well, Your Honor.

24 **THE COURT:** You can't just replay testimony we've
25 already heard. That's all I said.

1 **MR. FLOWERS:** And I can guarantee you, and the Court
2 certainly will hold us accountable, we are not going to be
3 replaying. Every rebuttal witness we bring in is going to
4 rebut what was said by the Government.

5 **THE COURT:** Fair enough. No problem.

6 **MR. FLOWERS:** Very well, Your Honor.

7 **THE COURT:** Now, understand, I haven't admitted these
8 two exhibits yet. They're still up in the air. I'd like to
9 read each brief. And the argument so far seems to be that the
10 damage is done, the evidence is in. It's not in. It's not in
11 yet. It may come in and it may stay out, I don't know.

12 **MR. FLOWERS:** Can I respond to that very briefly, Your
13 Honor?

14 **THE COURT:** Yes, sir.

15 **MR. FLOWERS:** That's exactly why we're hamstrung,
16 because we don't know what's going to come in and what's not
17 going to come in.

18 **THE COURT:** Well, these exhibits were shown to you
19 before trial. You've seen these.

20 **MR. FLOWERS:** Right. And our position -- and we
21 contested them, right.

22 **THE COURT:** And the Government says that doors were
23 open on both of these -- well, you read the Government's
24 briefs. They make an argument that the doors have been opened,
25 aside from the evidentiary rules altogether.

1 **MR. FLOWERS:** Again, we certainly disagree that the
2 door has been opened to any of this. We were again, very, very
3 clear in our opening and our briefing and following the Court's
4 order that this case is about two of four issues of malicious
5 prosecution that the door has not been opened.

6 For example, this whole idea that the door was opened with
7 respect to the Harris 302, to rebut somehow what was said in
8 the expert report, the Government has had that expert report
9 for many months now. And then you wait now to say, "Hey, we
10 ought to be able to bring this information to rebut the expert
11 report." I mean, this is something completely new to us.

12 **THE COURT:** Well, again, I'm not going to go decide
13 this issue this morning. I want to reflect on it and read the
14 briefs. But I will say I think I was the one that raised this
15 after-acquired evidence issue and required briefing on it, so
16 it's not a surprise to anybody that it's an issue in the case.

17 Mr. Phelps?

18 **MR. PHELPS:** Yes, Your Honor, we're not available on
19 July 12th. You said that. I think there's been a
20 mischaracterization of how we've used this evidence, Your
21 Honor. Whether it was the 302s with Agent Lating or the 302s
22 with Agent Mosley, we just laid the foundation. We didn't ask
23 substantive questions about it.

24 **THE COURT:** Right. You asked foundational questions,
25 right. And I asked for a briefing on the public records issue.

1 **MR. PHELPS:** Additionally, Your Honor, I don't know
2 where kind of we are now with their request on ours, but we
3 agree with the proposal that Your Honor sent at the end of
4 late, I believe, Saturday, and that's how we think this case
5 should be proceeding.

6 And, Your Honor, what we've been told in Mr. Flowers'
7 email is that we're apparently -- we're going to interrupt
8 Mr. Smith's testimony and hear from two witnesses who were not
9 on anybody's exhibit list and we were told about on less than
10 24 hours' notice. I mean, I don't see why those witnesses are
11 testifying at all. They should have been disclosed.

12 **THE COURT:** Well, the argument is they were rebuttal
13 witnesses, they don't have to be disclosed. That's the
14 response.

15 **MR. PHELPS:** Your Honor, what's the new fact in the
16 case? The only thing we've done is admit evidence that was on
17 our exhibit list. I don't see why that gives rise to any
18 rebuttal.

19 **THE COURT:** I understand.

20 But what's the harm to the Government if we put up two
21 fairly short character witnesses that's going to say the
22 Defendant is a truthful person?

23 **MR. PHELPS:** First of all, I haven't heard that that's
24 what the witnesses are going to testify to. I don't know what
25 they're going to testify to.

1 But, again, I think, you know, less than 24 hours' notice
2 when there's no clear basis for rebuttal. Your Honor -- we
3 have no ability to prepare for these witnesses at all.

4 **THE COURT:** All right. These two rebuttal witnesses
5 have childcare issues that require them to be called today?

6 **MR. FLOWERS:** Yes, Your Honor. They actually drove in
7 three hours from Pennsylvania. They have a four year old and a
8 seven year old. They are working-class people who don't have
9 many means. They used to work for Pharmacare. And they rebut,
10 specifically, the allegation that they have put forward that
11 Pharmacare -- and, for example, Lisa Ridolfi, did not see
12 Mr. Annappareddy reverse medications that should have been
13 reversed. That Dennis Tokofsky and Lisa Ridolfi certainly were
14 people that had some -- as I think came out a little bit, some
15 biased against Indians, people from Southeast Asia.

16 Then, finally -- so they rebut those two things.

17 They also are character witnesses for Mr. Annappareddy,
18 and obviously rebut this idea that Mr. Annappareddy is a liar
19 and a fraud. So that's -- again, it's relatively short
20 testimony. And we only rushed them here based off what we
21 believed to be the state of the case on Friday, that we had to
22 get rebuttal witnesses in immediately. And we knew that these
23 two rebuttal witnesses, who we had thought about even before
24 the trial -- we didn't know if we were going to need to use
25 them until the evidence came in last week. So then --

1 **THE COURT:** I'll say again, 51 and 71 -- 71 and 59 are
2 not in. They're not admitting them. They just authenticated
3 them. They laid the foundation.

4 **MR. FLOWERS:** No, I understand that. But, still,
5 there's been plenty of evidence about Lisa Ridolfi and Dennis
6 Tokofsky being people who were very, very credible. Being
7 people who, when they told Agent Mosley and Agent Lating what
8 was going around, that they should believe them. We have
9 rebuttal evidence that shows they never should have believed
10 them.

11 **MR. PHELPS:** Your Honor, this is a substantive witness
12 talking about the facts of the case. It's not rebuttal at all.
13 We have a bunch of cases cited, Your Honor.

14 Permissible rebuttal evidence also includes evidence
15 unavailable earlier through no fault of the Plaintiff.

16 They've had plenty of time to bring in Mr. Patel and
17 Mrs. Patel to talk about all of the things Mr. Annappareddy
18 didn't do. They've had four years to disclose this witness.
19 This is not just a character witness, and it's not rebuttal
20 evidence at all.

21 **MR. FLOWERS:** Your Honor, how can they tell that this
22 is not a character witness. This person is a character
23 witness, number one.

24 Number two, there's certainly rebuttal. Their entire case
25 has been that they could rely on the testimony, the evidence

1 from Lisa Ridolfi and Dennis Tokofsky. You heard Agent Mosley
2 and Agent Lating take that stand and say that they were
3 credible, reliable witnesses. And we've got to so that they
4 were clearly -- that is, Dennis Tokofsky and Lisa Ridolfi, were
5 clearly unreliable. Those agents knew back in 2013 that they
6 were unreliable and still pushed passed that stop sign and
7 maliciously prosecuted Mr. Annappareddy. It is clear rebuttal
8 evidence.

9 **THE COURT:** All right. I still don't understand the
10 timing. They have childcare issues, and they drove here
11 yesterday --

12 **MR. FLOWERS:** Today.

13 **THE COURT:** -- but could they not drive here late this
14 week?

15 **MR. FLOWERS:** Well, just given the childcare and given
16 their work schedules, that was, why they were like, "Look, we
17 can do it Monday, and we can't do it later this week." And
18 quite frankly, on Friday, we didn't know that we could even
19 have past this week. So we were like, "Get here on Monday, we
20 need you." And they moved everything to get here on Monday,
21 drove three hours, you know, woke up this morning at, what,
22 4:00, 3:00 in the morning to get mere.

23 So, again, because they're both rebuttal and character
24 witnesses, given their childcare issues, given on Friday we
25 thought this case was going to end this week Friday and they

1 couldn't come any day except for Monday, that's why we
2 scrambled to get them here and let the Government know as soon
3 as possible once we knew we could get them.

4 **THE COURT:** All right. Over the strong objection of
5 the Government, I'm going to allow these two witnesses to be
6 called out of turn. I understand they'll be fairly short?

7 **MR. FLOWERS:** Yes, Your Honor.

8 **THE COURT:** The Government's objection is noted for
9 appeal purposes. I understand the Government specifically
10 objects. But I just think it's the right thing to do.

11 Now, what does that do for scheduling here on out? That's
12 the big question this morning.

13 **MR. FLOWERS:** Well, I think once they take the stand,
14 then we have after them Jed Smith. And then, if we get to Pam
15 Arnold, I think that's the scheduling. We also, quite frankly,
16 maybe even before we get to Jed Smith, we could play the
17 Cannata depositions, but I need to perhaps talk to co-counsel
18 to figure out --

19 **THE COURT:** But I'm talking about big picture. What
20 are we doing this week and next week, and do we come back in
21 July or not?

22 **MR. FLOWERS:** I suggest that we come back in July,
23 because as I indicated -- and the Court's again, very well
24 thought out, very mindful email to us on Saturday, that the
25 30-hour time limit simply is not enough for us to put on both a

1 case in chief and a rebuttal case, given that we're the only
2 party that walks in, at least on day one, with a burden. I
3 understand the burden shifts to the defense once we prove
4 malice. But on day one, we have that burden. And it is very
5 difficult for us to put together this case in 30 hours and, you
6 know, again, we're already a third through that, and
7 Mr. Annappareddy hadn't even taken the stand. And I know that
8 his testimony is going to take many hours.

9 Moreover, Your Honor, I appreciate Your Honor's, again,
10 very astute observation that Mr. Annappareddy, because this is
11 a bench trial, can go ahead and take the stand kind of out of
12 order. The problem with that, I think, it actually creates an
13 inefficiency. He's got to be able to -- because we are putting
14 on a rebuttal case -- listen to what everybody has to say, and
15 then be able to rebut what everyone has to say.

16 For those reasons, Your Honor, and what we've -- you know,
17 we've cited the Fourth Circuit case that the Court cited in its
18 order *Raynor versus G4S Secure Sols* at 805 Federal appendix 170
19 at 178, Fourth Circuit case at 2020, which does what this Court
20 has been doing, which is to be as efficient as possible except
21 for when that efficiency undercuts fairness.

22 And just given how the case has gone for these last
23 three days, given that there have been kind of rulings not yet
24 made, given that there are witnesses on European vacations, it
25 had been incredibly difficult for us to figure out who should

1 go when, how much time we should take for each person, because
2 we don't know what certain, very, very seminal rulings are
3 going to do to our case. If those things come in, that's a
4 different case than if those things don't come in. And so
5 we've always been hamstring, Your Honor, and so that's why --

6 **THE COURT:** Well, let me say, the only surprise I see
7 here is that two witnesses are in Europe this week and can't
8 come in until next week. Everything else in this case that's
9 come in can't be a surprise to the Plaintiff. I mean, I've
10 seen what we're looking at here.

11 But let me hear from the Government on scheduling.

12 **MR. PHELPS:** Your Honor, from Mr. Flowers' email he
13 says this weekend, he says, "We currently have at least four
14 more rebuttal witnesses."

15 We have no idea what they plan to do over the next week.
16 We don't know who these people are. We don't know what they're
17 actually going to rebut. If they're dropping witnesses on us
18 with less than 24-hours' notice, and they've clearly got more,
19 we just can't conduct the trial this way.

20 **THE COURT:** How about a notice right now who they
21 potentially might be.

22 Let's tell them right now.

23 **MR. FLOWERS:** Right, we can do that.

24 One is going to be Neelesh Vaidya. It's V-A-I-D-Y-A.
25 He's a doctor.

1 Another is a man by the name of Ernest McCray.

2 And, certainly, Mr. Annappareddy.

3 Let me consult with co-counsel.

4 Ah, and, of course, Bill Fassett, who's on the witness
5 list. He's the pharmacist expert who's on the witness list.

6 **THE COURT:** Mr. Phelps.

7 **MR. PHELPS:** First of all, Your Honor, one, are these
8 folks going to be testifying just as to character? Again, what
9 are these people doing? We have no idea.

10 And, again, I'd like to bring it back to the hours
11 discussion, Your Honor.

12 **THE COURT:** That's a fair question.

13 Are they going to talk about Mr. Annappareddy's
14 truthfulness and character, or are they going to rebut
15 substantive evidence that the other side is offering.

16 **MR. FLOWERS:** Both. Both. They're going to rebut
17 substantive evidence. Your Honor, this is no surprise to them.
18 This case has been going on for 10 years. For example,
19 Ernest McCray, you've already heard testimony, Your Honor,
20 about how neither Agent Lating nor Agent Mosley went and spoke
21 to the drivers at Pharmacare. These are the people that
22 actually delivered the medications. Had they spoke to those
23 drivers, they would have known those medications were
24 delivered.

25 Ernest McCray is one of those drivers. That rebuts their

1 case, and that shows that there was not probable cause. That
2 also shows that something so obvious that they should have done
3 and they didn't do, rather, that shows malice.

4 So Ernest McCray is a classic rebuttal witnesses, number
5 one.

6 Number two, he's going to give character evidence that
7 Mr. Annappareddy has a character for truthfulness, given that
8 the defense has been to assassinate his good character.

9 **MR. PHELPS:** Your Honor, these are substantive
10 witnesses talking about issues that are not new, that are being
11 dropped on us with no notice. They were not in the witness
12 list in the pretrial order. We're -- it completely -- they
13 didn't even tell us about these witnesses before this morning,
14 Your Honor. We've been planning witnesses for the next week
15 and a half.

16 **THE COURT:** All right. I'm concerned about that.
17 I've already ruled I'll let these two come in today because of
18 the unique childcare situation and job situation. But once we
19 get past that, I'm scared that calling people out of order and
20 switching things around affects my ability to put these
21 objections in perspective. So I think what we need to do is
22 take a deep breath, step back, just proceed in a normal
23 fashion. If we don't fill up testimony this week or next week,
24 I'll go home early and I come back sometime in July.

25 The best week for me that I have no court schedule is the

1 last week of July, which is Monday the 24th.

2 **MR. PHELPS:** Your Honor, I start a trial July 17th. I
3 mean, nothing in July is going to work for me.

4 **THE COURT:** Is it more than four years old,
5 Mr. Phelps?

6 **MR. PHELPS:** It's a criminal trial, Your Honor. It is
7 not more than four years old, and I would just adverse --

8 **THE COURT:** There's nobody else in the office that can
9 prosecute the case?

10 **MR. PHELPS:** On a month notice, Your Honor, that's
11 basically what we're talking about right now.

12 **THE COURT:** Who is the trial judge for that?

13 **MR. PHELPS:** It's Chief Judge Bredar.

14 **THE COURT:** So you're not available the whole month of
15 July?

16 **MR. PHELPS:** I mean, Your Honor, I've got to prep for
17 it at some point.

18 **THE COURT:** I still can't pin down, if I have to come
19 back, how many days do I have to come back if we just proceed
20 in a normal fashion? I haven't gotten an answer to that yet.
21 If we just don't call anybody out of order and proceed in a
22 normal fashion, put up the two witnesses on Wednesday and
23 Thursday of next week, even if it means we don't have a trial
24 Monday and Tuesday, if we do that, how many more days do we
25 need past Friday, the 16th of June?

1 I mean, if we only need for me to come back two days the
2 last week of July, I feel certain Chief Judge Bredar would
3 delay your trial by two days or maybe even a week.

4 **MR. PHELPS:** I'm less optimistic, Your Honor. But
5 Your Honor, we're debating a hypothetical. Why are we having
6 gaps in the next couple weeks at all?

7 **THE COURT:** Let's go ahead and not lose time, let's go
8 ahead and put up these two witnesses and get some testimony.
9 Let me reflect on all this.

10 **MR. PHELPS:** Your Honor, for the record, I would like
11 that these witnesses right now count against the Plaintiff's
12 time.

13 **THE COURT:** See, that's the problem, calling them out
14 of turn, I don't know if they're really rebuttal or not.

15 **MR. PHELPS:** They're not.

16 **THE COURT:** Let me just hold that under advisement.
17 It may well count against time.

18 **MR. FLOWERS:** Your Honor, obviously our position is
19 that they are rebuttal witnesses and that they should not count
20 against our time. Moreover, Your Honor, the 30 hours, given
21 how this trial has come in to date, again, we need to revisit
22 whether that's an appropriate time period from our perspective.
23 It's not fair --

24 **THE COURT:** Well, I can decide whether they're true
25 rebuttal or substantive witnesses after I hear their testimony.

1 So let's go ahead. Do you want to finish with the expert
2 first, or do you want to put them up now?

3 **MR. FLOWERS:** We want to put them on first.

4 The other thing, Your Honor, I just want to make crystal
5 clear, Mr. Phelps and the Government have asked for our
6 non-government witnesses. And we have told them as soon as we
7 can let them know, we will let them know. So it's not as if
8 they are surprised that there were going to be some rebuttal
9 witnesses not on the exhibit list -- or not on the witness
10 list. That's what rebuttal witnesses are, Your Honor. And so,
11 again, we have been, you know, very diligent in trying to let
12 them know when we were going to be able to put on what
13 witnesses. But quite frankly, we really did not know until
14 Friday in given kind of what happened last week.

15 So, again, I just wanted the Court to be clear that that's
16 what's going on.

17 **MR. PHELPS:** Your Honor, our position is there's been
18 zero surprise, zero new facts, no new rebuttal should be
19 permitted on this point.

20 **THE COURT:** Well, you may be right. I may end up
21 agreeing with you in saying this is substantive evidence and it
22 counts against the 30 hours. I can decide that after I hear
23 the witnesses.

24 It's 9:30, let's move forward.

25 Please call the next witness.

1 **MR. FLOWERS:** Very well, Your Honor.

2 The Plaintiff calls Vipin Patel.

3 **THE CLERK:** Sir, please raise your right hand.

4 (Witness sworn.)

5 **THE CLERK:** Sir, for the record, could you please
6 state and spell your first and last name.

7 **THE WITNESS:** My first name is Vipinkumar, last name
8 is Patel.

9 **THE CLERK:** And could you spell those names for the
10 record, please.

11 **THE WITNESS:** My first name is spelled
12 V-I-P-I-N-K-U-M-A-R. That's my first name. Last name is
13 Patel, P-A-T-E-L.

14 **THE CLERK:** Thank you.

15 - - -

16 **DIRECT EXAMINATION**

17 - - -

18 **BY MR. FLOWERS:**

19 **Q.** Good morning, Mr. Patel.

20 **A.** Good morning.

21 **Q.** Mr. Patel, can you please tell Judge Anderson how are you
22 employed.

23 **A.** How am I employed?

24 **Q.** Yes.

25 **A.** Mr. Annappareddy, he employed me in his Pharmacare

1 pharmacy as a technician over there in 2009.

2 Q. I want to ask you how you're employed now in 2023, sir?

3 A. '23, I work for a company called KVK Tech in a QC lab.

4 Q. And can you say the company again, sir.

5 A. KVK Tech.

6 Q. KVK Tech?

7 A. It's a pharmaceutical company. I work in QC lab as a
8 chemist over there.

9 Q. And when you say QC lab --

10 A. Quality control.

11 Q. Mr. Patel, I'm going to try to ask questions, and when I
12 ask questions, I'll need you to be quiet and listen. And then
13 when you answer questions, I'll do my best to be quiet and
14 listen so that the court reporter can record the testimony as
15 easily as possible. Will you agree to that, sir?

16 A. Sure.

17 Q. Okay, sir.

18 Mr. Patel, where do you currently live?

19 A. I live in Benton, Pennsylvania.

20 Q. How many kids do you have?

21 A. I have two kids.

22 Q. How old are your kids?

23 A. One is seven, and one is three.

24 Q. Who is the mother of those kids?

25 A. My wife, Pragnaben Patel.

- 1 Q. And Pragnaben Patel, did she come with you today to court?
- 2 A. Yes.
- 3 Q. And who's taking care of the kids?
- 4 A. One of my friends, he's taking care of my kids. Like,
- 5 he's going to drop them to preschool and school, and they'll
- 6 pick him up.
- 7 Q. All right. Is it fair to say this was the only day you
- 8 could come to court today, given your childcare situation?
- 9 A. Correct.
- 10 Q. Okay.
- 11 Mr. Patel, where did you go to pharmacy school?
- 12 A. In India, SCS School of Pharmacy. It's in Karnataka,
- 13 India.
- 14 Q. What degree did you obtain in that pharmacy school?
- 15 A. Bachelor of Pharmacy.
- 16 Q. What year did you obtain your Bachelor of Pharmacy degree,
- 17 sir?
- 18 A. I believe it's 2005.
- 19 Q. After you obtained your Bachelor of Pharmacy degree in
- 20 2005, where did you go next with respect to your education?
- 21 A. I came to pursue my master, my MBA in Healthcare in United
- 22 States. It's in University of Findlay, Ohio.
- 23 Q. All right. And, again, what degree did you obtain from
- 24 the University of Findlay in Ohio?
- 25 A. It's MBA in Healthcare Management.

1 Q. All right. What year did you obtain that MBA from Findlay
2 University in Ohio?

3 A. From 2006 to 2008.

4 Q. Once you graduated in 2008, where did you go to work, sir?

5 A. After graduation, I came to Maryland to see my wife. And
6 I came in contact with Mr. Reddy. He offered me a job
7 opportunity in his pharmacy.

8 Q. All right. And what pharmacy did he offer you a job
9 opportunity in?

10 A. It's Pharmacare at Old Emmorton Road.

11 Q. And what year did you begin working at Pharmacare at Old
12 Emmorton Road?

13 A. 2009.

14 Q. And, if you could, tell Judge Anderson what year did you
15 leave Pharmacare?

16 A. Until I get arrested in this healthcare, July 25th, 2013.

17 Q. And did you say until you were "arrested" --

18 A. Yes.

19 Q. -- "in this healthcare fraud," Mr. Patel?

20 A. Correct.

21 Q. Okay. We'll come back to that.

22 It's fair to say, though, that you worked at Pharmacare
23 from 2009 until 2013?

24 A. Correct.

25 Q. All right. You mentioned that you worked at Old Emmorton

1 Road. Do you recall that testimony, sir?

2 A. Yes.

3 Q. Did you ever have occasion to work at the Plumtree branch
4 of Pharmacare?

5 A. Yes. In -- 2012, I worked at Plumtree pharmacy as well.

6 Q. In 2013, were you also at Plumtree pharmacy?

7 A. 2013, I work at CareMerica at Old Emmorton Road.

8 Q. And CareMerica was part of Pharmacare?

9 A. Yes.

10 Q. All right. Mr. Patel, can you explain to the Court how
11 Mr. Annappareddy ran Pharmacare with respect to his customers.

12 A. He was very knowledgable, and he treat his customer like a
13 family. Like, anybody comes in the Pharmacare pharmacy, he
14 knows basically all the patients personally. Like, he treat
15 them very well. And he give a good service to all of the
16 employee -- all of the customers.

17 Q. That's a good segue there. You mentioned employees. How
18 did Mr. Annappareddy treat his employees?

19 A. He treat very well to all the employees. Sometimes he
20 yell at somebody because of some mistake, but that is good for
21 a person. Like, this is a healthcare thing, right, so if
22 somebody made a mistake, we don't want a patient's life to be
23 in danger by filling out some wrong medication or something.
24 So in certain cases, he used to yell, that for good only, good
25 for the patient's life.

1 Q. When you say that Mr. Annappareddy used to yell --

2 A. If somebody make a mistake. Sorry.

3 Q. I don't want to talk when you're talking, so I want to say
4 I'm sorry for that. And I appreciate you saying you're sorry
5 for talking when I talk.

6 I just want to follow up on your answer, that you said
7 Mr. Annappareddy would yell sometimes at his employees when
8 they made mistakes because he was concerned about the patients'
9 health; do I have that correct, sir?

10 A. Correct.

11 Q. Was there a time when Mr. Annappareddy would yell and you
12 felt it was inappropriate?

13 A. Not at all.

14 Q. Why do you say that, sir?

15 A. Because that is good for us all. If you made -- you can't
16 make the same mistake again if that happens.

17 Q. Very well.

18 There's been evidence in this case about how
19 Mr. Annappareddy housed some of his employees. I'd like to ask
20 you, Mr. Patel, about what you know about being an employee at
21 Pharmacare and living in housing provided by Pharmacare.

22 Can you explain to Judge Anderson where you lived when you
23 worked for Pharmacare.

24 A. When I came to Maryland, I used to live in a motel. Then
25 Mr. Annappareddy provided me the houses, they have townhouses

1 over there, a few of them. So they provided me a housing over
2 there. They providing everybody a house. It's like
3 willingness, if you want to stay there or you want to rent an
4 apartment for yourself. So I choose to stay in their houses.

5 Q. When you lived in the hotel and then you moved over into
6 the Pharmacare houses, what was the better living environment?

7 A. It's much better in Pharmacare houses because they provide
8 me a separate room, kitchen, and bathroom for me and my wife.
9 My wife is strictly a vegetarian, so it's better to have a
10 separate kitchen for her. So they made arrangement for me
11 separate room, bathroom, and a kitchen.

12 Q. How would you describe the housing environment as far as
13 was it renovated, was it new. How would you characterize or
14 describe the housing environment that Pharmacare and
15 Mr. Annappareddy provided?

16 A. It's brand new, renovated houses. They made separate, new
17 kitchen, new bathroom, and new building for us.

18 Q. And I think you said it was renovated housing; is that
19 correct, sir?

20 A. Yes.

21 Q. I should have asked you about explaining how many
22 languages you speak so we can understand a little bit of your
23 accent. What languages do you speak, Mr. Patel?

24 A. I speak three languages: English, Gujarati, and Hindi.

25 Q. Very well.

1 Getting back to the housing situation, do you recall what
2 address you lived in one of the Pharmicare houses?

3 A. 1410 Hartford Square Drive, Edgewood, Maryland.

4 Q. And when you were living at 1410 Hartford Square Drive --
5 that's H-A-R-T-F-O-R-D, for the record -- was there a time when
6 there was bed bug or other kind of infestation in the house?

7 A. Yes.

8 Q. Explain what happened to Judge Anderson.

9 A. Pharmacare had a new employee there, her name was Whittia
10 [ph] she came from New Jersey or somewhere, and she brought
11 bugs to the house. Our house was infected with bed bugs and
12 roaches over there. So I complain to Mr. Reddy about this
13 thing, like, it's been hard living with bed bugs and roaches in
14 the houses.

15 On the same day, he called somebody and treated the house.
16 It's nice of him to help us to do that.

17 Q. All right. How would you describe Mr. Annappareddy's
18 concern for you and the people in that house when there was
19 this infestation from bed bugs and roaches?

20 A. Can I get the question again?

21 Q. Of course. In your -- as you remember this, do you
22 remember whether Mr. Annappareddy was concerned for your
23 welfare in a house in which there was infestation by roaches
24 and bed bugs?

25 A. Yes, definitely. Yeah.

1 Q. All right.

2 Let me turn your attention, Mr. Patel, to what happened at
3 Pharmacare as far as how the pharmacy was run. Can you explain
4 to Judge Anderson who billed the prescriptions at Pharmacare.

5 A. Pharmacy technicians, they bill the prescriptions. Then
6 it goes to the -- another technician to fill the medicines.
7 And it goes to the pharmacist to fill the prescriptions and bag
8 the prescriptions and keep them in designated places. Like, we
9 had bins for local deliveries, local patients; bins for some
10 clinics, for BBH, Bon Secours, those kind of clinics we help.
11 So we have designated bins. So pharmacists keep a designated
12 medication bag in particular bins.

13 Q. Let me just kind of walk through your answer just a little
14 bit there.

15 Just to be clear, what was your role at Pharmacare? What
16 was your title?

17 A. I'm a pharmacy technician, so I bill medicines and
18 prescriptions, and sometimes I fill the prescriptions as well.

19 Q. As a pharmacy technician, you bill the prescriptions,
20 correct?

21 A. Correct.

22 Q. All right. Who at Pharmacare was in charge of reversing
23 prescriptions?

24 A. Pharmacists.

25 Q. When -- did you ever have occasion to work with a

1 pharmacist by the name of Lisa Ridolfi?

2 A. Yes.

3 Q. All right. When you worked with that pharmacist, was that
4 at Plumtree?

5 A. Plumtree location, correct.

6 Q. When you worked with that pharmacist -- that is, Lisa
7 Ridolfi -- when, if ever, did she reverse prescriptions?

8 A. She usually, whenever the prescription needs to be
9 reversed, she had a bin. Like, she keep those medications on
10 her place. Usually, other pharmacists, what they do is, if
11 they're busy, they give these prescriptions to a technician to
12 reverse a claim. In case of Lisa, she mostly keep all the bins
13 over there, and she says, like, she will reverse them when she
14 get time, or something like that.

15 Q. All right. This is very important to explain to
16 Judge Anderson. If I follow your testimony, other pharmacists
17 would allow people like you, lab technicians, to reverse the
18 prescriptions when they told you to; is that correct?

19 A. Correct.

20 Q. By contract, Lisa Ridolfi would not allow other lab
21 technicians, like yourself, to reverse prescriptions; is that
22 correct, sir?

23 A. Correct.

24 Q. And, again, I just want to be clear, she would not allow
25 other pharmacy technicians to reverse prescriptions; is that

1 correct?

2 A. Correct.

3 Q. And Lisa Ridolfi, she was a pharmacist; is that correct?

4 A. Yeah, she's pharmacist.

5 Q. And she's the one who is in charge of reversals; is that
6 correct?

7 A. Correct.

8 Q. You had occasion to work with other pharmacists there at
9 Pharmacare; is that correct?

10 A. Correct.

11 Q. Those other pharmacists, did they allow you, as a lab
12 technician, to do reversals?

13 A. Yes.

14 Q. In your time there at Pharmacare, was there any
15 pharmacist, like Lisa Ridolfi, who wouldn't let -- who would
16 not let lab technicians do reversals once they were given the
17 directive to do reversals by the pharmacist?

18 MR. PHELPS: Objection, leading.

19 MR. FLOWERS: I can reask the question.

20 THE COURT: All right. Rephrase it.

21 BY MR. FLOWERS:

22 Q. Mr. Patel, with respect to Lisa Ridolfi and her way of
23 doing reversals for medications, was that the same or different
24 in comparison to other pharmacists?

25 A. It's different.

1 Q. Why?

2 A. Because when other pharmacists are doing reversals, if
3 they're busy, they give some technician to do the claim. But
4 as in the case of Lisa, what she was doing, she was keeping the
5 medicine bags on her desk. And I don't know those medicines
6 are getting reversed or not.

7 Q. I want to ask some more questions about Lisa Ridolfi.
8 Explain to Judge Anderson how Lisa Ridolfi treated the white
9 American employees versus how she treated the Indian American
10 employees -- or the Indian, I should say, employees.

11 A. She was very nice with the white Americans, like, Linda,
12 she was one technician, and Sam, he was a cashier and delivery
13 guy for a local patient. She was very nice to them all the
14 time. And when it comes to any mistake happen by the
15 technician, like, if Linda makes any mistake, she would be easy
16 on her. But when any Indian technicians, like me or other
17 technicians, if they made any mistakes over there, she start
18 yelling at us. So there's a difference between how she treats
19 us and the American technicians.

20 Q. The way that she treated -- when you say "us," what do you
21 mean by "us," Mr. Patel?

22 A. Indian technicians.

23 Q. And were there any Middle Eastern technicians working
24 there with you?

25 A. I don't remember that.

1 Q. Is that fair to say that there were other Indian
2 technicians working there with you?

3 A. Correct.

4 Q. All right. And I want to be clear, Mr. Patel, are you
5 talking about the time in 2012 and 2013 at Plumtree when you're
6 talking about Lisa Ridolfi?

7 A. Yes.

8 Q. I want to move your testimony, Mr. Patel, to this idea of
9 Med-4 medications. Mr. Patel, can you explain to
10 Judge Anderson what was a Med-4 medication as you used that
11 term at Pharmacare at Plumtree in 2012, 2013?

12 A. Med-4 means we have patient lists that are critical to
13 see, like, for example, HIV, cancer, those kind of patients
14 list, we have that. They need their medication on a timely
15 basis, so they should not miss any doses. That's why we made a
16 separate list for critically ill patients.

17 Q. This list, is it fair to call that a Med-4 list or a Med-4
18 calendar?

19 A. Correct.

20 Q. Was this list kept secret?

21 A. No.

22 Q. Did Lisa Ridolfi have access to this list?

23 A. It has access for everybody, yes.

24 Q. When you say "everybody," does that include the Indian
25 people that worked at Pharmacare?

1 A. Yes.

2 Q. Does that include the non-Indian people that worked at
3 Pharmacare?

4 A. Yes.

5 Q. Mr. Patel, I want to ask you about the various logs that
6 were kept at Pharmacare. The logs that were kept at
7 Pharmacare, let's focus on the signature logs, what were the
8 signature logs used for, sir? Can you explain that to
9 Judge Anderson.

10 A. The signature logs means, like, once patient received the
11 medicine, they sign they received this medicine.

12 Q. Again, if I understand your testimony, you're saying the
13 signature logs were something that the patient, him or herself,
14 would sign to show that they received the medicine; is that
15 true, sir?

16 A. Correct.

17 Q. When, if ever, did Mr. Annappareddy direct you or anybody
18 to forge patient signatures on signature logs?

19 A. Not at all.

20 Q. I now want to direct your attention, Mr. Patel, to
21 delivery logs. Please explain to Judge Anderson what is a
22 delivery log and how was it used at Pharmacare.

23 A. Delivery logs means it has to be with the drivers. So the
24 driver would take the medicine to the customer to home
25 delivery. They get the signature from customer from that.

1 Q. So on the delivery logs, if I follow your testimony, a
2 patient would sign the delivery log that they actually received
3 the medication; is that fair to say?

4 A. Correct.

5 Q. Those delivery logs, they were maintained with the drivers
6 at Pharmacare?

7 A. Yes.

8 Q. When, if ever, did Mr. Annappareddy ask you to forge a
9 patient's signature on a delivery log?

10 A. Not at all, never.

11 Q. I now want to ask you, Mr. Patel, about delivery bins at
12 Pharmacare. How were delivery bins at Pharmacare used?

13 A. As I said earlier, like, we have local and some clinic
14 bins over there. So when we fill a prescription up, if it is a
15 Bon Secours patient, we have a stamp system over there, so on
16 the bag, we stamp Bon Secours. If it's local patient, we stamp
17 a local over there, that way the pharmacies know this
18 medication bag has to go in which bin. So we had, like,
19 multiple bins over there on the floor. And from there, a
20 driver took over there for deliveries.

21 Q. Again, I just want to run back through your answer there,
22 Mr. Patel. Each bin was designated to go to a certain
23 destination; is that fair to say, sir?

24 A. Correct, yes.

25 Q. So for Secours, there was a bin for Secours; is that

1 correct?

2 A. Right.

3 Q. Then, I think you said, there was a bin for local patients
4 or customers; is that correct, sir?

5 A. Yes.

6 Q. Describe to Judge Anderson how empty or not empty the bins
7 tended to be.

8 A. It depends on the day. Like, if we are busy -- so if
9 we're filling 300, 400 prescriptions a day, so they will be
10 piling up in the bins. And some days, like slower days, we
11 have, like, 200 prescriptions. That day, the bins are evenly
12 filled. Like, depends on the day, like, how many patients we
13 get locally, how many prescriptions we get from Bon Secours,
14 how many patients we're getting from BBH, like that. Depends
15 on the day.

16 Q. All right. Is it fair to say that there were days when
17 the bins were overflowing?

18 A. Yeah.

19 Q. Is it fair to say that there were days when the bins were
20 not overflowing?

21 A. Correct.

22 Q. I'm going to show you what I want to mark just for
23 identification purposes as Plaintiff's Exhibit 149.

24 Mr. Patel, do you see what I've marked as Plaintiff's
25 Exhibit 149?

1 A. It should be here or here?

2 Q. That I've just put on the witness stand there, that's
3 Plaintiff's Exhibit 149. Did you see what I've marked as
4 Plaintiff's Exhibit 149?

5 A. Yeah.

6 Q. And just, for the purposes of the record, we need to get
7 an actual exhibit sticker to put on there.

8 Mr. Patel, is that a fair kind of representation of the
9 bins that were at Pharmacare in 2012, 2013?

10 A. Yes.

11 Q. When you talked earlier about those bins being overflowed,
12 again, is Plaintiff's Exhibit 149 a good example of what that
13 bin would look like?

14 A. Yes. Except for the top cover.

15 Q. When you say "except for the top cover," explain to
16 Judge Anderson what you mean by that.

17 A. It was open. Like, we didn't have a cover over there.

18 Q. Okay. And with the top cover not being on Plaintiff's
19 Exhibit 149, is it fair to say then that medications would
20 actually go over the top of the bin there?

21 A. Yes.

22 Q. And you said there were days when you had over 400, I
23 guess, medications and customers; did you say that?

24 A. Prescriptions, yes.

25 Q. Prescriptions. And that was a heavy day, that was a big

1 day; is that correct?

2 A. Yes.

3 Q. On those days, would bins, like Plaintiff's Exhibit 149,
4 be filled?

5 A. Yes. Overfilled.

6 MR. FLOWERS: Your Honor, at this time, I move into
7 evidence Plaintiff's Exhibit 149.

8 THE COURT: Any objection?

9 MR. PHELPS: No, Your Honor.

10 THE COURT: Admitted without objection.

11 BY MR. FLOWERS:

12 Q. I just have a few more questions, Mr. Patel.

13 When you worked at Pharmacare, Mr. Patel, what was your
14 immigration status?

15 A. I was H1B, that is called work permit visa.

16 Q. When, if ever, did Mr. Annappareddy tell you that you had
17 to do whatever he said or he would send you back to India?

18 A. Never.

19 Q. When you were there working at Pharmacare, again, I want
20 you to focus on 2012 and 2013, when, if ever, did you see
21 Mr. Annappareddy tell other Indian employees that if they
22 didn't do what he said, they would get sent back to India?

23 A. No. In 2012 and 2013, they filed many Green Cards for
24 other people. It's a process for Green Card process. It takes
25 very long. So the company started applying for Green Card. My

1 Green Card was started applying in 2012. So he never said
2 anybody, "Just go to India," like that.

3 Q. Mr. Patel, when you worked at Pharmacare -- now I'm going
4 all the way back to 2009 until 2013, when, if ever, did
5 Mr. Annappareddy tell you to commit Medicaid fraud?

6 A. Never.

7 Q. When, if ever, did Mr. Annappareddy tell you not to
8 reverse medications?

9 A. No, never.

10 Q. As an employee there at Pharmacare, are you aware of any
11 time that Mr. Annappareddy told others to engage in fraud?

12 A. Never. I never seen like that.

13 Q. What did Mr. Annappareddy do when you were there to stop
14 any type of fraud?

15 A. I never came in a case like that, that happening in
16 Pharmacare. So . . .

17 Q. Were there ever meetings where Mr. Annappareddy and others
18 would talk about the correct way to follow the law?

19 A. Yes.

20 Q. Can you describe that to Judge Anderson.

21 A. We held meetings also in KVK -- I'm sorry, my bad, it's
22 Pharmacare. And the pharmacists and management, they are
23 telling us how you follow the laws in -- in meetings, we
24 discuss about everything, filling out the prescription, how you
25 can avoid mistakes also.

1 Q. Now, Mr. Patel, earlier in your testimony, you mentioned
2 that in July of 2013, you were arrested for Medicaid fraud. Do
3 you recall that testimony, sir?

4 A. Yes.

5 Q. Can you explain to Judge Anderson what happened when you
6 were arrested in July of 2013 for Medicaid fraud?

7 A. In July 25, 2013, some FBI agent came to my house, and
8 they arrested me. I was asking them, like, "What is the
9 reason?" But nobody was saying anything to me. Until my wife
10 came out and she was begging them, why they arrested. They
11 never told us until they handcuff me at the back, and until my
12 wife asked, nobody was saying anything. Then they show us on
13 documentation that they are in charge of Pharmacare fraud, they
14 are arresting people like that.

15 Then they took me here, in the court, and I had to spend,
16 like, four days in jail because my passport was not there. It
17 was in renewal for Washington, D.C. So I had to stay for jail
18 for four days here. Then I got bail.

19 Q. What was it like for you to be in jail for four days?

20 MR. PHELPS: Objection, Your Honor, relevance.

21 THE COURT: Sustained.

22 MR. FLOWERS: Very well.

23 BY MR. FLOWERS:

24 Q. Mr. Patel, ultimately, can you explain to Judge Anderson
25 what happened with these charges of Medicaid fraud that were

1 brought against you.

2 A. What happen?

3 Q. Yes.

4 A. It was -- it was false charges against me.

5 Q. When you say they were false charges against you, why do
6 you say that, sir?

7 A. Because I never committed any crime like this. I'm
8 innocent in this one.

9 Q. And do you recall, Mr. Patel, when you pled guilty in this
10 case?

11 A. I didn't plead guilty until, like, about a year or so.
12 Then the Government kept more charges on me, they added more
13 count on me to pressure me to plead guilty. Even after that,
14 also I didn't plead guilty. But after that, Government, like
15 Ms. Wilkinson and Laura -- Maura -- what's her name?

16 Q. Well --

17 MR. PHELPS: Objection to the answer, it's
18 nonresponsive.

19 MR. FLOWERS: Whoa, whoa, whoa. Let the witness
20 answer the question.

21 BY MR. FLOWERS:

22 Q. The evidence can only come from you, Mr. Patel, I can't
23 give you evidence.

24 A. Ms. Lating, I don't know the first name, Maura or Laura.
25 But I know the last name, Ms. Lating.

1 Q. Okay.

2 A. They were telling me that if you don't plead guilty that
3 they are going to bring charges against my wife. She used to
4 work in Pharmacare as well for a couple of years. And they
5 know that my father's condition is very bad. He was suffering
6 from cancer at that time. So they considered to fly back me
7 India, to just visit my dad, if I plead guilty on this one. So
8 I plead guilty around 2014, just because they're forcing my
9 wife, in this case also. And they are considering to fly me to
10 India to see my dad, my dying dad.

11 Q. And, again, just so I understand why you pled guilty in
12 this case, you said it was because they were force -- they were
13 threatening to charge your wife; is that correct?

14 A. Correct.

15 Q. And the "they" is, I think you said, a Maura or Laura
16 Lating; is that correct, sir?

17 A. Ms. Lating, yes.

18 Q. And Sandra Wilkinson; is that correct, sir?

19 A. Correct.

20 Q. You also pled guilty -- you said something about your
21 father; is that correct?

22 A. Yes.

23 Q. Explain again to Judge Anderson what that was about.

24 A. My father was dying at that time. Like, he was suffering
25 from cancer, last days. And they said, if you plead guilty

1 they'll consider fly me back there to see my dad.

2 Q. Did you ever get a chance to see your dad?

3 A. Never. Even after pleading guilty also, I didn't see my
4 dad. I will regret entire my life, not seeing my dad when he
5 was dying, when he need me.

6 Q. How did that make you feel?

7 MR. PHELPS: Objection, relevance.

8 THE COURT: I'll let it in, for what it's worth.

9 Go ahead.

10 BY MR. FLOWERS:

11 Q. How did that make you feel, sir?

12 A. It's very emotional. Like, I will regret entire my life,
13 not seeing my dad. That's what I can say.

14 Q. You also mentioned, Mr. Patel, that you pled guilty
15 because they threatened to bring more charges against you.
16 Explain to Judge Anderson what that was like.

17 A. They kept more charges, like, they kept some indictment on
18 me in between. They bring more charges on me, more than
19 Mr. Reddy.

20 Q. When you pled guilty some year after you were arrested,
21 why did it take so long?

22 A. Because I was innocent. I was telling Ms. Oyer --
23 Ms. Oyer was my public defender -- that I'm innocent, we'll
24 fight this case. But she was not supporting as well.

25 Q. Mr. Patel, you mentioned that Maura or Laura Lating was

1 one of the people that forced you to plead guilty when you were
2 not guilty; do you recall that testimony, sir?

3 A. Yes.

4 Q. I want to show you what I've marked for identification
5 purposes as Plaintiff's Exhibit 146.

6 MR. FLOWERS: Are the screens operational? I don't
7 think the screens at counsel table are operational.

8 MR. PHELPS: Your Honor, I object to the use of this
9 exhibit.

10 THE COURT: All right. You want to put up
11 Agent Lating's testimony?

12 MR. FLOWERS: No, no. Just the photo.

13 THE COURT: All right. I have it on my screen.

14 MR. FLOWERS: For some reason, it's not showing on the
15 counsel table, Your Honor.

16 THE CLERK: Is it just not showing on your counsel
17 table?

18 MR. FLOWERS: It's not showing -- oh, you do have it.

19 THE COURT: If it's just a photograph for the witness,
20 does he have it? That's the main thing.

21 Do you have a face on your screen?

22 THE WITNESS: Yes.

23 THE COURT: Y'all know what she looks like. We do
24 need to get the monitors fixed for a later exhibit probably.

25 MR. FLOWERS: Very well, Your Honor.

1 **BY MR. FLOWERS:**

2 **Q.** Mr. Patel, looking at Plaintiff's Exhibit 146, is that a
3 fair and accurate representation of Ms. Maura or Laura Lating
4 who forced to you plead guilty?

5 **A.** Yes.

6 **MR. PHELPS:** Objection to the characterization.

7 **THE COURT:** Overruled. Overruled.

8 **BY MR. FLOWERS:**

9 **Q.** Mr. Patel, is that about how Maura or Laura Lating looked
10 back in 2013?

11 **A.** She was a little younger, like . . .

12 **Q.** All right. Mr. Patel, aside from her being a little bit
13 younger, is that a fair and accurate representation of Maura or
14 Laura Lating who forced you to plead guilty?

15 **A.** Yes.

16 **MR. FLOWERS:** At this time, Your Honor, I move into
17 evidence Plaintiff's Exhibit 146.

18 **THE COURT:** Just the picture of Ms. Lating?

19 **MR. FLOWERS:** Just the picture, yes.

20 **MR. PHELPS:** No objection.

21 **THE COURT:** All right. Admitted without objection.

22 **BY MR. FLOWERS:**

23 **Q.** You also mentioned, Mr. Patel, that as part of your -- let
24 me ask it this way.

25 When you pled guilty, Mr. Patel, you went before a judge;

1 is that correct?

2 A. Yes.

3 Q. And you gave a statement of facts under oath; is that
4 correct?

5 A. Correct.

6 Q. And when you gave that statement of facts under oath, is
7 it fair to say that that was not a true statement of facts?

8 A. Correct.

9 Q. Also, Mr. Patel, when did you testify at all in the case
10 against Mr. Annappareddy?

11 A. When?

12 Q. Yes.

13 A. In 2014 or '15 -- '14 I think.

14 Q. In 2014, when you testified in Mr. Annappareddy's case,
15 it's fair to say that was the criminal case?

16 A. Yes.

17 Q. And when you testified in that case, was that testimony
18 true or false?

19 A. It was false, the Government forced me to say whatever I
20 said in that one.

21 Q. And when you say "the Government," are you talking about
22 the same -- Maura Lating?

23 A. Yes.

24 **MR. FLOWERS:** Your Honor, I just have a few more
25 questions to ask Mr. Patel. But before I do, I would just ask

1 the Court's indulgence so I can consult with co-counsel and
2 Mr. Annappareddy.

3 **THE COURT:** Go ahead.

4 (Counsel conferring.)

5 **BY MR. FLOWERS:**

6 **Q.** Mr. Patel, I just have a few more questions.

7 If I recall your testimony correctly, Mr. Patel, you've
8 known Mr. Annappareddy since about 2008 or 2009; is that fair
9 to say, sir?

10 **A.** 2009, yes.

11 **Q.** 2009. In your interactions with Mr. Annappareddy since
12 2009 now through 2023, what opinion do you have of
13 Mr. Annappareddy's character or truthfulness?

14 **A.** He's a very honest person, and he's very truthful. Like,
15 whatever he promises, he always fulfill those.

16 **MR. FLOWERS:** Your Honor, Plaintiff has no further
17 questions.

18 **THE COURT:** All right. It appears to me that
19 everything except that last question which was --

20 Stop the clock.

21 It appears to me everything except that last question was
22 not rebuttal. It was substantive evidence, and it should count
23 against time. And, likewise, the Government's
24 cross-examination would count as well.

25 **MR. PHELPS:** We agree, Your Honor.

1 **THE COURT:** All right. Cross-examination.

2 **MR. PHELPS:** Your Honor, could we have a 5- or
3 10-minute break? I mean, this is the first time we've had any
4 idea what this witness was going to say.

5 **THE COURT:** We'll take a 15-minute recess at this
6 time.

7 **THE CLERK:** All rise. This Honorable Court is now in
8 recess.

9 (Whereupon, a recess was taken from 10:10 a.m. to 10:24,
10 a.m.)

11 **THE CLERK:** All rise. This Honorable Court resumes in
12 session.

13 **THE COURT:** Please be seated.

14 All right. Before we begin cross, let me ask, does this
15 witness have an attorney in the courtroom representing him? I
16 assume not.

17 **MR. FLOWERS:** No, Your Honor, he does not.

18 **THE COURT:** Well, then the next question is: Do I
19 need to advise him about self-incrimination and so forth? He
20 may have already waived that right by testifying on direct.

21 **MR. FLOWERS:** Couple things, Your Honor. So as the
22 Court is, I think, aware, he already filed a declaration in
23 this case, and that's going to be ECF No. 254.

24 **THE COURT:** All right.

25 **MR. FLOWERS:** And that declaration, essentially,

1 encapsulates the testimony that he gave today. That
2 declaration was signed back on December 5 of 2022. As the
3 Court is well aware, there's a five-year statute of limitations
4 for kind of Medicaid-fraud type crimes. So he testified back
5 in 2014, so I think he's -- 2014, 2015, he's well past any type
6 of statute of limitations issue.

7 **THE COURT:** But presumably, he was under oath when he
8 recited the facts in the guilty plea, and he's under oath
9 today.

10 **MR. FLOWERS:** That's exactly right. And he was under
11 oath when he testified at the criminal trial in 2014, 2015.

12 **THE COURT:** All right. Let's move forward.
13 Cross-examination.

14 **MR. PHELPS:** Yes, Your Honor. Just -- Your Honor
15 noted our vociferous objection. I can't remember if it was to
16 this witness in particular. But, again, we note the objection
17 of the witness being called for the record.

18 **THE COURT:** You're protected on appeal, yes, sir.

19 **MR. FLOWERS:** Your Honor, also, just for purposes of
20 the record, our position is that this is not substantive
21 evidence, but it is rebuttal evidence. I understand the
22 Court's --

23 **THE COURT:** I strongly disagree. I think this is
24 substantive evidence from the get-go. The last eight seconds
25 were character-type rebuttal. But I just disagree.

1 Please proceed.

2 MR. FLOWERS: Thank you, Your Honor.

3 - - -

4 CROSS-EXAMINATION

5 - - -

6 BY MR. PHELPS:

7 Q. Mr. Patel, what is your understanding of why you're here
8 today?

9 A. Can you repeat the question.

10 Q. Why are you here today?

11 A. To testify in this case.

12 Q. Okay. And what do you know about this case?

13 A. Mr. Annappareddy was charged on healthcare fraud, just
14 like me. And he, I think, won the case against this one. And
15 now he filed a lawsuit against Government to pay part of his
16 suffering.

17 Q. And when were you asked to come be a witness in this case?

18 A. As I gave a declaration in last December, they are in talk
19 with me from last couple of months.

20 Q. When were you asked to come today?

21 A. Friday.

22 Q. Friday. So, basically, the next business day you came --

23 A. Yes.

24 Q. -- when asked.

25 You did not interview with any government agents before

1 you were arrested in July of 2013, correct?

2 A. Before, no.

3 Q. And you pled guilty in this case to making a false
4 statement to the Government, correct?

5 A. I plead guilty because of my -- they forcing me to -- by
6 adding more charges, and they want -- they want my wife to be
7 charged in the same case, and they considering me to fly me to
8 Indian, that's --

9 Q. What did you plead guilty to --

10 MR. FLOWERS: Objection, Your Honor. He didn't let
11 him finish his answer.

12 MR. PHELPS: It wasn't the answer, Your Honor.

13 MR. FLOWERS: He didn't finish his answer, Your Honor.
14 Please stop badgering the witness.

15 THE COURT: Go ahead and finish your last answer, sir.

16 THE WITNESS: So they considered if I plead guilty,
17 then they let me go to India to see my dad. These are the main
18 reasons I plead guilty on.

19 BY MR. PHELPS:

20 Q. What did you plead guilty to?

21 A. It's given statement, whatever I sign. I don't remember
22 those things. But my attorney, Liz Oyer, right, she showed me
23 the paper, and whatever is mentioned in that statement, I sign
24 over there for plea guilty.

25 Q. What was the crime you were charged with that you pled

1 guilty to?

2 A. Healthcare fraud.

3 Q. Okay. I'm showing you what is marked as Defense 67.

4 Is this a copy of your plea agreement, Mr. Patel?

5 A. It's blurry.

6 Q. Yeah, sorry about that.

7 A. Yes.

8 Q. That's -- and Ms. Elizabeth Oyer, that was your attorney
9 at the top, correct?

10 A. Correct.

11 Q. And it says here that you pled guilty to making false
12 statements with respect to a healthcare fraud matter.

13 Do you see that?

14 A. Yes.

15 Q. And so that's what you pled guilty to, was making a false
16 statement, correct?

17 A. Correct.

18 Q. But now you're telling us that your guilty plea is
19 actually a false statement, correct?

20 A. Yes.

21 Q. Okay. Tell us about New Year's Eve, 2012, Mr. Patel.

22 A. 2012?

23 Q. Yeah.

24 A. It's very long.

25 Q. What did you do on New Year's Eve in 2012?

1 A. 2012?

2 Q. Yeah.

3 A. I don't recall exactly.

4 Q. Okay. Did you go to Plumtree and bill late at night?

5 A. If you -- I'm not sure. Like, if you have something to
6 show to recall my memory, I would like to see that.

7 Q. Okay. Do you remember pleading guilty to going to
8 Plumtree -- or explaining in your statement of facts in your
9 plea of going to Plumtree to bill late into the night on New
10 Year's Eve of 2012?

11 A. I might have. Because New Year's Eve and Christmastime,
12 when our patients need medications, we are going to the
13 pharmacy to bill -- refill the prescriptions, to make sure they
14 get the medicines, what they need because they're critically
15 ill patients, right.

16 Q. But you didn't actually fill those prescriptions, did you,
17 you just billed them, right?

18 A. No.

19 Q. Okay. Well, let's go back to Defense Exhibit 67. Could
20 you go ahead and read for me, please, the paragraph that begins
21 "For example." You can read it out loud.

22 A. "For example, Patel was at Plumtree until 11:40 p.m. on
23 New Year's Eve, 2012, having arrived after the pharmacy had
24 closed on the holiday. Mannava, Patel, and other individuals
25 billed PIP for eligible prescription refills at Pharmacare

1 Plumtree in its computerized patient profiles. Many of the
2 drugs were never packaged or filled when the claims were
3 submitted. Indeed, all 300 claims were submitted to the
4 insurance companies after 5:30 p.m., yet the refill logs at
5 Plumtree reflect only 53 of the prescriptions were actually
6 filled."

7 Q. So you didn't actually fill the prescriptions for the
8 really critically sick patients who needed them, right?

9 A. We might have filled all the prescriptions.

10 Q. Okay. Well, that's not what you said back in 2014, right?
11 You said you didn't fill them.

12 A. In the plea agreement?

13 Q. Yes.

14 A. Because it was forced. They forced me to sign those plea.

15 Q. So in particular, they forced you to say not just that you
16 were there in billing, but that you billed them and didn't fill
17 them?

18 A. We filled them.

19 Q. Okay. You filled them, but you wrote -- you agreed to
20 something else in your plea agreement, right?

21 A. Because they're forcing me that things.

22 Q. Who was with you at your guilty plea? Was there anybody
23 there with you?

24 A. Ms. Oyer.

25 Q. Okay. And isn't it true, Mr. Patel, that the clinics that

1 Pharmacare serviced would complain that their patients were
2 being billed for medications that their patients were no longer
3 taking; isn't that right?

4 A. I don't remember those things.

5 Q. All right. Well, let's go back to Page 2, again, of your
6 plea agreement. Could you go ahead and read the sentence
7 starting "for example."

8 A. "For example, in an email, Patel and co-defendants Jigar
9 Patel and Annappareddy received on October 8, 2012, a clinic
10 representative complained about billing meds for insurance
11 companies for medication patients are not receiving; in one
12 case, for a year."

13 Q. So isn't it true, Mr. Patel, that clinics were, in fact,
14 complaining that patients were being billed for prescriptions
15 that they weren't taking?

16 A. Yeah, as per this document, yes.

17 Q. And the Government didn't invent the email that was cited
18 in your plea agreement, did they?

19 A. Can you repeat the question again.

20 Q. The Government didn't invent the email that you just read,
21 did they?

22 A. Invent email?

23 Q. Correct.

24 A. What does that mean? Like . . .

25 Q. Is this statement true? Did you get an email from the

1 clinic saying that the Pharmacare was billing for patients who
2 didn't receive their medication?

3 A. I received email?

4 Q. I'm asking you, Mr. Patel, that's what it says right
5 there, isn't it?

6 A. But the email is supposed to come to management of
7 pharmacy, sir, not me, as a technician.

8 Q. Okay. So this -- when you've agreed to a statement of
9 facts that concluded reference to an email, you have no idea
10 what that was about?

11 A. Yes.

12 Q. Okay. Isn't it true, Mr. Patel, that you billed
13 prescriptions for a cancer patient J.S. after you were aware
14 that she was no longer taking the medication?

15 A. I billed?

16 Q. Yes.

17 A. She was a Plumtree patient, right? I was working in
18 CareMerica.

19 Q. And you billed her for prescriptions that she didn't
20 receive or that -- for drugs she was no longer taking, correct?

21 A. I don't recall. Can you have any document to refresh my
22 memory?

23 Q. Sure. Go ahead and read the highlighted paragraph at the
24 bottom of Page 3.

25 **MR. FLOWERS:** Your Honor, I'm going to object to this

1 line of cross-examination. He has said over and over again
2 that this plea agreement is false. So for Mr. Phelps to try to
3 say that this is somehow true, when he said it is false, this
4 is asked and answered several times.

5 **THE COURT:** I understand your position, but I don't
6 think a witness can just blow off all adverse questions by
7 saying everything in there is false. I think counsel should be
8 able to go through it point by point.

9 So objection is overruled.

10 **BY MR. PHELPS:**

11 **Q.** Go ahead and read the bottom of Page 3 and the top of
12 Page 4 that I have highlighted here, please, Mr. Patel.

13 **A.** "The March 2013 Med-4 list maintained by Patel reflects
14 that J.S. was not on the medication. Yet, at Patel's
15 direction, additional claim of Afinitor was submitted for J.S.
16 on March 11, 2013; April 29, 2013; and May 27, 2013. The
17 amount of claims for unrequested and undelivered medications
18 for J.S. is \$31,933.36."

19 **Q.** So, in fact, Mr. Patel, isn't it true that you billed for
20 a patient for drugs that you knew she wasn't taking?

21 **A.** I didn't bill this one. Somebody else bill these
22 medicines.

23 **Q.** It says at your direction, doesn't it?

24 **A.** I'm a technician, how can I direct them?

25 **Q.** Okay. Well, that's not what you said in 2014, is it?

1 A. Yes. I say this one because they are -- force me to say,
2 sir.

3 Q. Mr. Patel, the last page of the plea agreement, that's
4 your signature, correct?

5 A. Correct.

6 Q. And it's your testimony, Mr. Patel, that the reason why
7 you testified falsely in your plea agreement and the reason why
8 you testified falsely in the criminal trial is because the
9 Government was threatening you, correct?

10 A. Correct.

11 Q. But, in fact, Mr. Annappareddy was the one who was
12 threatening you; isn't that right?

13 A. No.

14 Q. You were afraid of Mr. Annappareddy, weren't you?

15 A. Nope. I want to say something about this J.S., as well.
16 Can I?

17 Q. They can ask you a question about it if they want.

18 A. Okay.

19 **THE COURT:** Let me ask, Mr. Phelps, the single-spaced
20 document you were just reading from, the statement of facts,
21 was that literally in the plea agreement itself?

22 **MR. PHELPS:** Yes, Your Honor. So the way we do it in
23 Maryland, I know different jurisdictions do it differently, is
24 there is a stipulated factual section that is attached to and
25 filed with the plea. So yes.

1 **THE COURT:** Which is different -- in South Carolina,
2 the plea agreement is pretty comprehensive, but the statement
3 of facts is not reduced to writing, usually. The case agent
4 stands up and recites verbally in the courtroom the facts the
5 Government developed, and then we ask the defendant to confirm
6 that those facts are correct. But I understand it's done
7 differently. And here, it is done differently.

8 **MR. PHELPS:** Yes, Your Honor.

9 **THE COURT:** Very good.

10 **MR. PHELPS:** And, Your Honor, I would like to formally
11 move Exhibit 67 into evidence.

12 **THE COURT:** That's what we just looked at?

13 **MR. FLOWERS:** No objection.

14 **THE COURT:** Admitted without objection. Very good.
15 Anything further?

16 **MR. PHELPS:** Yes, Your Honor. I've got a few more
17 questions.

18 I've got a new Exhibit Your Honor, it is -- this'll be
19 Exhibit 97. And for the record, this is an excerpt of
20 Mr. Patel's criminal trial testimony that's filed on the public
21 docket in the criminal case.

22 **MR. FLOWERS:** What's the exhibit number?

23 **MR. PHELPS:** Ninety-seven.

24 **MR. FLOWERS:** And just for the record, there's not a
25 cover page to exhibit -- Defense Exhibit 97. There is an ECF

1 number, however.

2 THE COURT: So it's just one page of the transcript
3 without a caption or a heading, in other words.

4 MR. PHELPS: It's a few pages, Your Honor.

5 THE COURT: Right.

6 MR. FLOWERS: Yes, Your Honor.

7 THE COURT: Few pages.

8 Go ahead.

9 BY MR. PHELPS:

10 Q. And Mr. Annappareddy would yell at you, correct?

11 A. Yes.

12 Q. And he would use profanity with you, correct?

13 A. Only support -- like --

14 Q. He would use curse words, correct?

15 A. He just yelled.

16 Q. Would he curse?

17 A. Not really.

18 Q. So go ahead and read for me, please, lines 10 through 20,
19 Mr. Patel.

20 A. "10: Q, QUESTION: How did he treat you as employee?

21 "ANSWER: Like, if I make any kind of mistake, he just
22 started fussing, like, yelling. Yelling at me in front of
23 everybody. He doesn't see if a patient is there or not. Like,
24 he -- he's just yelling at us in front of everybody. He did
25 not care who was watching and like that.

1 "QUESTION: Did he use profanity?

2 "ANSWER: What is profanity?

3 "QUESTION: Curse words. Curse words. Did he use curse
4 words?

5 "ANSWER: Like, he was so angry at time, so he might have
6 used some curse words."

7 Q. And you were afraid of him, right?

8 A. Yes.

9 Q. You were afraid of Mr. Annappareddy?

10 A. No -- sorry, I didn't hear. I thought curse words --

11 Q. Okay. Are you aware of Mr. Annappareddy or not?

12 A. No.

13 Q. Then why did you tell the criminal court and the jury that
14 you were?

15 A. That time, maybe I said, "Yes," but I never afraid of him.

16 Q. Okay. So this wasn't true, either? You were never afraid
17 of him?

18 A. Yes.

19 Q. And, in fact, he did use your H1B visa status to threaten
20 you, didn't he?

21 A. H1B visa?

22 Q. He used your Visa status as a threat, didn't he?

23 A. No, never.

24 Q. Okay. Well, that is what you told the criminal trial,
25 isn't it?

1 Go ahead and read the whole thing, from line 13 to 19, 13
2 to 18.

3 A. "QUESTION: And in what context would he tell you? Why
4 would he say that to you --

5 "ANSWER: Because he remind me that he is a sponsor, and
6 he -- if he -- don't follow, he might revoke my visa.

7 "QUESTION: 'He might revoke my visa?'

8 "ANSWER: Yes."

9 Q. And so Mr. Annappareddy did threaten to revoke your visa,
10 didn't he?

11 A. No.

12 Q. Okay. That wasn't true either?

13 A. Yes.

14
15 MR. PHELPS: Nothing further.

16 THE COURT: All right. Any additional questioning?

17 MR. FLOWERS: Just very quickly, Your Honor.

18 - - -

19 **REDIRECT EXAMINATION**

20 - - -

21 **BY MR. FLOWERS:**

22 Q. Mr. Patel, did Mr. Annappareddy ever have the power to put
23 you in jail?

24 A. No.

25 Q. Did Mr. Annappareddy ever have the power to decide whether

1 you could go see whether your father lived or died?

2 A. No.

3 Q. Did Mr. Annappareddy ever have the power to allow you to
4 go see your father's funeral?

5 A. Can you repeat the question again?

6 Q. That's not a great question.

7 Did Mr. Annappareddy ever control whether you were going
8 to be able to go see your father at his funeral?

9 A. No.

10 Q. To go see your father in his last dying days?

11 A. He never can told me.

12 Q. Did Mr. Annappareddy ever have the power to bring
13 additional federal criminal charges against you?

14 A. No.

15 Q. When you were in jail the very first time when you were
16 arrested for the fraud case in 2013 --

17 A. Correct.

18 Q. -- tell the judge how afraid you were of going back to
19 that place.

20 MR. PHELPS: Objection. It's beyond the scope of
21 anything I asked.

22 MR. FLOWERS: No, it goes -- all his cross-examination
23 was about how he lied. Your Honor, you need to know why this
24 man lied and the incredible power that was -- the Government
25 put over him to make him lie.

1 **THE COURT:** I'll overrule the objection.

2 Go ahead.

3 **BY MR. FLOWERS:**

4 **Q.** Mr. Patel, explain to Judge Anderson why, when you were in
5 jail the very first time you were arrested, right here in
6 Baltimore, why you never wanted to go back to that place?

7 **A.** Because that place was very miserable. Like, those
8 four days, I never felt it in my life. Like, I didn't eat well
9 in that four days. I was crying continuously. When my wife
10 came to see me, I just ask her just do whatever it takes to
11 bring me out from this place. It was very miserable. And
12 whenever I dream about that thing, also, I cry.

13 **MR. FLOWERS:** I have no further questions, Your Honor.

14 **THE COURT:** Thank you, sir. You may step down.

15 (Witness exits.)

16 **THE COURT:** Please call your next witness.

17 **MR. FLOWERS:** Thank you, Your Honor. The Plaintiff
18 calls Ms. Pragna Patel.

19 (Witness enters.)

20 **THE CLERK:** Ma'am, please remain standing and raise
21 your right hand.

22 (Witness sworn.)

23 **THE CLERK:** You may be seated.

24 For the record, ma'am, could you please state and spell
25 your first and last name.

1 **THE WITNESS:** My first name is Pragnaben, and my last
2 name is Patel.

3 **THE CLERK:** Could you spell your first and last name,
4 please.

5 **THE WITNESS:** Yeah. My first name is spelled P-, as
6 in Peter, -R-A-G-N-A-B-E-N. My last name spell is P-A-T-E-L.

7 **THE CLERK:** Thank you.

8 - - -

9 **DIRECT EXAMINATION**

10 - - -

11 **BY MR. FLOWERS:**

12 **Q.** Good morning, Mrs. Patel.

13 **A.** Good morning, Kobie.

14 **Q.** I'm going to ask you some questions, Mrs. Patel, about
15 your background. Okay? First, Mrs. Patel, can you tell
16 Judge Anderson who's your husband.

17 **A.** My husband is Vipin Patel.

18 **Q.** Is Mr. Vipin Patel the person who just testified before
19 you?

20 **A.** Yes.

21 **Q.** And how many kids do you-all have?

22 **A.** We have two kids.

23 **Q.** What are their ages?

24 **A.** My daughter is seven year old, and my son is four year
25 old.

1 Q. And Ms. Patel, what country do you come from?

2 A. I come from India.

3 Q. What country does your husband come from?

4 A. India.

5 Q. How many languages do you speak?

6 A. Three.

7 Q. I want to ask you some questions, Mrs. Patel, about your
8 education.

9 Where did you go to college?

10 A. So I did my Bachelor of Pharmacy from back home in India.
11 And then I pursue my MBA in Marketing at Goldey-Beacom College
12 in Delaware.

13 Q. And when you received your Bachelor's of Pharmacy,
14 Mrs. Patel, what year was that?

15 A. It was in 2005.

16 Q. And when did you receive your, I believe you said, MBA?

17 A. In 2012.

18 Q. Where did you receive your MBA, Mrs. Patel?

19 A. Goldey-Beacom College of Delaware.

20 Q. Mrs. Patel, how are you currently employed in 2023?

21 A. Can you repeat the question, please.

22 Q. Yes. Of course, I can.

23 Do you have a job that you go to work to every day?

24 A. Yes.

25 Q. And what is that job?

1 A. So I'm an analytical chemist 3.

2 Q. What company do you work for?

3 A. I work for Quotient Sciences.

4 Q. Mrs. Patel, can you tell Judge Anderson when you worked
5 for Pharmacare and Mr. Reddy Annappareddy.

6 A. I started working from 2009.

7 Q. And when did you stop working?

8 A. I stopped working in 2012.

9 Q. And from 2009 to 2012, did you have occasion to work at
10 the Plumtree store of Pharmacare?

11 A. Yes.

12 Q. And when you worked at the Plumtree store in Pharmacare,
13 was that in the year of about 2012?

14 A. Yes.

15 Q. And did you have occasion when you worked at the Plumtree
16 store in 2012, to work with a pharmacist by the name of
17 Lisa Ridolfi?

18 A. Right. That's correct.

19 Q. When you worked with Lisa Ridolfi, can you explain to the
20 judge how she treated Indian workers versus how she treated
21 white American workers.

22 A. So her -- her behavior with the Indian employee was
23 different. Her body language and the way she talks, it was
24 completely different than she talks with the white people. She
25 was so sweet with them. She was so -- she talks with them very

1 well. She tried to discuss everything with them. And at some
2 point, she has even given a warning letters to few of our
3 Indian technician, but not even -- not to the white people,
4 even if they make a mistakes.

5 Q. Is it fair to say that she treated the Indian technicians
6 worse than she treated the white technicians?

7 A. Yes.

8 Q. When you worked at the Plumtree store of Pharmacare, what
9 was your title there?

10 A. I was a pharmacy technician.

11 Q. You were a pharmacy technician. Is it fair to say then
12 that you worked under the actual pharmacist at the store?

13 A. Yes.

14 Q. And what was Lisa Ridolfi?

15 A. She was a pharmacist.

16 Q. Mrs. Patel, during your time working at Pharmacare from
17 2009 to 2012, when, if ever, did Mr. Reddy Annappareddy tell
18 you to commit fraud?

19 A. Never.

20 Q. During your time at Plumtree Pharmacare from 2009 to 2012,
21 when, if ever, did Mr. Annappareddy threaten to fire you and
22 send you to India if you didn't do what he said?

23 A. Never.

24 Q. Mrs. Patel, when you worked at Plumtree -- or Pharmacare,
25 I should say, from 2009 to 2012, when, if ever, did

1 Mr. Annappareddy ask you not to do reversals of medications?

2 A. He never asked that.

3 Q. Mrs. Patel, did you ever have education to be interviewed
4 by a Maura Lating in 2013 or 2014?

5 A. Yes.

6 Q. Can you describe to Judge Anderson what Maura Lating did
7 to you during that interview.

8 MR. PHELPS: Objection, leading.

9 THE COURT: Overruled.

10 THE WITNESS: So I was called by Maura Lating,
11 Sandra -- and Sandra Wilkinson. And they were trying to ask me
12 few things about pharmacy. And whatever I told them, they were
13 not agreeing with that. And they were trying to put their word
14 in my mouth, and they were forcing me to say what they want me
15 to say.

16 BY MR. FLOWERS:

17 Q. Mrs. Patel, when you say they were forcing you to say what
18 they wanted you to say, is what they wanted you to say --

19 A. Yes.

20 Q. -- the truth, or was it false? What they wanted you to
21 say?

22 A. Whatever they were saying was false. According to me,
23 whatever I have seen in the pharmacy and what they were saying
24 were two different things. So what they were saying was
25 completely wrong.

1 Q. When you say "they were wanting me to say things that were
2 completely wrong," the "they" includes Maura Lating; is that
3 correct?

4 A. Yes.

5 Q. Includes Sandra Wilkinson; is that correct?

6 A. Yes.

7 Q. Let me ask you a few questions, Mrs. Patel, about the
8 Med-4 calendar. Do you recall what the Med-4 calendar was?

9 A. Med-4 was for really -- that calendar was for really sick
10 patients who required their medication on time without missing
11 any dose. And they were, like, cancer patients, hepatitis,
12 HIV, all that kind of serious disease patients.

13 Q. At Pharmacare, when you were there from 2009 to 2012,
14 Mrs. Patel, who had access to that Med-4 calendar?

15 A. Everybody had access. All the pharmacists and technicians
16 and everyone.

17 Q. Did that include Lisa Ridolfi?

18 A. Yes.

19 Q. I'm going to show you, Mrs. Patel, what's been marked and
20 already admitted into evidence as Plaintiff's Exhibit 146. Do
21 you recognize Plaintiff's Exhibit 146, Mrs. Patel?

22 A. No. What is it?

23 Q. I'm sorry. Can you see on your screen a picture --

24 A. Oh.

25 Q. -- that for the --

1 A. Yes, it's Maura Lating.

2 Q. Let me ask the question. I'm sorry, I should have
3 explained, I've got to ask questions and, then you be quiet,
4 and then when you give your answer, I'm going to reciprocate
5 and be quiet so the court reporter can write down everything.
6 Okay?

7 When you look on your screen, there is pictured what we
8 call Plaintiff's Exhibit 146. Do you recognize Plaintiff's
9 Exhibit 146?

10 A. Yes.

11 Q. Who is depicted in Plaintiff's Exhibit 146?

12 A. Maura Lating.

13 Q. Is that the same Maura Lating who was telling you to say
14 things that were false?

15 A. Yes. But she looks little bit older than in 2013.

16 Q. All right. Fair enough. Fair enough.

17 I also want to show you what's been marked as Plaintiff's
18 Exhibit 144 for identification purposes. Do you recognize
19 Plaintiff's Exhibit 144?

20 A. Yes.

21 Q. Please tell Judge Anderson who is depicted in Plaintiff's
22 Exhibit 144.

23 A. She's Sandra Wilkinson.

24 Q. Is that a fair and accurate representation of Sandra
25 Wilkinson as you remember her back in 2013 or so when you met

1 with her and Maura Lating?

2 A. Yes. Same with her, she looks little bit aged than in
3 2013.

4 Q. Aside of her looking a little bit more aged, I think is
5 what you said, in 2013, is that a fair and accurate
6 representation of Sandra Wilkinson?

7 A. Uh-huh. Yeah.

8 MR. FLOWERS: Your Honor, I move into evidence
9 Plaintiff's Exhibit 144.

10 MR. PHELPS: No objection.

11 THE COURT: Without objection, admitted.

12 MR. FLOWERS: I just have a few more questions,
13 Mrs. Patel.

14 But before I ask those last few questions, with the
15 Court's indulgence, I'd like to consult briefly with co-counsel
16 and my client, Mr. Annappareddy.

17 THE COURT: Go ahead.

18 MR. FLOWERS: Thank you.

19 (Counsel conferring.)

20 BY MR. FLOWERS:

21 Q. Mrs. Patel, for your work at Pharmacare, it's fair to say
22 you were never charged with a crime?

23 A. No, no. Because, at that time, I was not working.

24 Q. Were you aware that the Government threatened your husband
25 that they were going to charge you with a crime?

1 A. Yes.

2 Q. What do you know about that?

3 A. So for first year, my husband fought, and he didn't plead
4 guilty because he knows that he was innocent. And still, they
5 tried on him, they told him they would put more charges on him
6 if he don't plead guilty.

7 And then they kept the charges. But still, my husband was
8 strong. He fought, and he didn't plead guilty. But at last,
9 Government didn't find anything, so they told my husband if he
10 don't plead guilty, they will put charges on me. And at the
11 same time, they found out that my father-in-law's health was
12 getting into the bad condition because he was on the last stage
13 of cancer. So they took that benefit, and they told him that
14 they will let him go to see his father if he plead guilty.

15 Q. Thank you, Mrs. Patel.

16 My last few questions for you, Mrs. Patel, is when did you
17 first meet Mr. Reddy Annappareddy?

18 A. My sister was sick, so somebody suggested us to go to
19 Mr. Reddy's pharmacy. And they also said that he's a very good
20 guy and he take cares of patient very well. He will give you
21 good price. Because, at that time, we didn't have insurance.
22 So we went there to fill up my sister's prescription. And at
23 that time, we were talking, and we found out that he -- I was
24 talking, and I told him that I also did a pharmacy, and then he
25 offered me a job over there. And that's how I started working

1 in Pharmacare.

2 Q. What year was that, approximately, Mrs. Patel?

3 A. 2008. And I started working -- because I had some
4 requirement for the visa application and everything, so I
5 started worked from 2009.

6 Q. You met him in 2008; you started working in 2009. You
7 ended working at Pharmacare around 2012; is that fair to say?

8 A. Uh-huh.

9 Q. Why did you stop working in 2012?

10 A. Sorry. Can you repeat it?

11 Q. Yes, ma'am.

12 Why did you stop your work at Pharmacare around 2012?

13 A. So my father-in-law got sick. He had a cancer. And we
14 are very family oriented. And Vipin, he went in November to
15 see his dad. He stayed November to December. And after that,
16 I went, and I wanted to spend some time with my father-in-law.
17 So I quit the Pharmacare, and I went back home and spend some
18 time with my father-in-law.

19 Q. From 2008 until now, 2023, is it fair to say you've known
20 Reddy Vijay Annappareddy?

21 A. Yes.

22 Q. What is your opinion about Reddy Vijay Annappareddy's
23 character for truthfulness?

24 A. I can say he's very honest person. I have worked with him
25 from -- like, I have worked with him for about three to

1 four years, and I have never seen him doing -- or being
2 dishonest with anything, not even with the patient, not even
3 with the employee.

4 Q. How does he treat the patients?

5 A. Patient was gold for him. Because the only thing he wants
6 is to take care of the patient, we have to take care of the
7 patient very well. So when the patient enters into the
8 pharmacy, he will greet them. He knows each and every patient.
9 We had, like, more than 2 to 300 patient. But he knows each
10 and every patient's name. He call them by their name, he will
11 greet them. He knows their family. He will talk with them.
12 He will continuously talk with him. He will try to know what's
13 going on in their life. He tried to help them. He was very
14 good. And when the patient new, he never forget to show his
15 gratitude to them.

16 Q. How did Reddy treat the employees, like yourself, who
17 worked for him?

18 A. He was a supportive boss. But whatever he was doing, he
19 was doing for the good will of the patient. And he was good.
20 I mean, he was taking care of all employees. Whenever we don't
21 have any patient, he will try to talk with all employees. He
22 will try to talk, like, what's going on in their life.

23 So, for example, one day when we were working, he was
24 trying to talk with me and, like, he was trying to talk with
25 me, "What's going in your life [sic]? How is" -- I was living

1 with one of the Indian family, "How they are treating you?" So
2 by talking with him, I started crying because they were
3 treating me very bad where I was living. So at that time, he
4 helped me, he calmed me down, and he really helped me at that
5 time.

6 Q. Is that when you left that Indian family's house and
7 actually moved into one of Annappareddy's house?

8 A. Yes, that's how, yes.

9 Q. And he did that because he saw you weren't doing well in
10 this other housing situation?

11 A. Yes.

12 Q. And I just have one last question, Mrs. Patel. And
13 actually, the question comes from Reddy Annappareddy himself.
14 He wants to ask, how has this whole case affected your life,
15 ma'am?

16 MR. PHELPS: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. FLOWERS: No further questions, Your Honor.

19 THE COURT: All right. Cross-examination.

20 - - -

21 **CROSS-EXAMINATION**

22 - - -

23 BY MR. PHELPS:

24 Q. Mrs. Patel, could you give me start and end dates on your
25 employment at Pharmacare one more time?

1 A. Yes. 2009 to 2012.

2 Q. And when did your husband work there?

3 A. 2009 until 2013.

4 Q. Was your role at Pharmacare a pharmacy technician, you
5 said?

6 A. Yes.

7 Q. And were you a pharmacy technician for that three-year
8 period?

9 A. Yes.

10 Q. And where physically did you work during that three-year
11 period?

12 A. So my first two years, 2009 to 2012, and maybe half of
13 2011, I worked at Old Emmorton pharmacy.

14 Q. And who were the pharmacists there?

15 A. So for few months, I worked with Reddy. And after that --
16 after that, I worked with Anu [ph]. There were many different
17 pharmacists I worked with.

18 Q. And then maybe beginning 2012, you went to Plumtree?

19 A. Yes.

20 Q. And what was your role as a pharmacy technician?

21 A. My role was to fill the prescription, bill the
22 prescription and fill the prescription.

23 Q. Okay. And did you have any role with respect to
24 reversals?

25 A. Yes. Whenever pharmacist ask us.

1 Q. Could you explain what you mean. "Whenever a pharmacist
2 asked us," what does that -- what do you mean?

3 A. So we had a cashier, and whenever -- and the cashier take
4 cares of all the bins. Whatever the prescription is, like, if
5 it was filled on 1st of June, and it was not picked up until 14
6 June, then we have to reverse that claim. So the cashier will
7 take all the bags to the pharmacist, and then pharmacist will
8 assign a technician to reverse that prescription.

9 Q. So the technicians would be the ones who actually
10 performed the reversal?

11 A. Yes.

12 Q. And you gave the example June 1 to June 14. Why did you
13 use that example?

14 A. It was hard for me to explain, so I just used the example.

15 Q. But you said June 1 to June 14, right; that's what you
16 said.

17 A. Yes.

18 Q. And that's 14 days?

19 A. Yes.

20 Q. What's significant about the 14 days?

21 A. I just picked a number. I think we have to reverse -- I
22 exactly don't remember right now. It's been long time. But we
23 have to reverse a prescription maybe after 14 or 15 days.

24 Q. Okay. And who taught you how to do your job as a pharmacy
25 technician?

1 A. Sorry?

2 Q. Who trained you to do your job as a pharmacy technician?

3 A. So while I was working with Reddy, I was trained by Reddy.
4 And we had another technician, I don't remember her name, but
5 she trained me for ordering and everything.

6 Q. And you were asked questions about meeting with the
7 Government, by Mr. Flowers, do you remember that?

8 A. (Witness nodded.)

9 Q. You said "yes", if you don't mind, you nodded your head?

10 A. Yes. Sorry.

11 Q. And you did not meet with the Government before your
12 husband was charged with a crime in July of 2013, correct?

13 A. Correct.

14 MR. PHELPS: Thank you.

15 MR. FLOWERS: Just very quickly on redirect, Your
16 Honor.

17 - - -

18 REDIRECT EXAMINATION

19 - - -

20 BY MR. FLOWERS:

21 Q. Mrs. Patel, Mr. Phelps asked you questions about
22 reversals; do you recall those questions?

23 A. Yes.

24 Q. And you've testified that lab technicians performed the
25 reversals, correct?

1 A. Yes.

2 Q. Now, you, as a lab technician, performed those reversals
3 when a pharmacist would tell you to do the reversal; is that
4 fair to say?

5 A. Yes. Yes, that's what I to do him, too.

6 Q. Now, you worked with several pharmacists at Pharmacare,
7 correct?

8 A. Yes.

9 Q. You worked with Mr. Annappareddy, right?

10 A. Yes.

11 Q. Mr. Annappareddy told you to do reversals, correct?

12 A. Yes.

13 Q. You also worked with Lisa Ridolfi, right?

14 A. Yes.

15 Q. She was a pharmacist, correct?

16 A. Yes.

17 Q. She never told you to do reversals; is that correct?

18 A. Correct.

19 MR. PHELPS: Objection.

20 THE COURT: You're leading.

21 Sustained.

22 BY MR. FLOWERS:

23 Q. Let me ask it without leading.

24 You had occasion to work with Lisa Ridolfi, correct?

25 A. Correct.

1 Q. And what role did Lisa -- what title did she have at
2 Plumtree?

3 A. She was a pharmacist.

4 Q. As a pharmacist, what was she supposed to do with respect
5 to reversals?

6 A. She was responsible to take care of -- to reverse the
7 prescription or assign some technician to reverse that
8 prescription.

9 Q. In your experience working with Lisa Ridolfi as a
10 pharmacist, when, if ever, did she tell you to do a reversal?

11 A. Never.

12 Q. In your experience, as a lab technician at Pharmacare,
13 what other pharmacist would never tell you to do reversals, if
14 any?

15 MR. PHELPS: Objection, some combination of
16 hypothetical, hearsay, asking about what other pharmacists told
17 her.

18 MR. FLOWERS: In her experience, is what the question
19 says. It's not hypothetical at all. It's when she remembers
20 from when she was there.

21 THE COURT: Overruled. I'll allow it.

22 Go ahead.

23 BY MR. FLOWERS:

24 Q. Let me ask the question for you again, Mrs. Patel. In
25 your experience at Pharmacare, what pharmacist, if any, like

1 Lisa Ridolfi, did not tell you to do reversals?

2 A. I'm sorry, I didn't get the question.

3 Q. That's fair. It's not a very good question.

4 Were there any other pharmacists at Pharmacare who, like
5 Lisa Ridolfi, never told you to do reversals?

6 A. Nobody.

7 MR. FLOWERS: Thank you, Your Honor. We have no
8 further questions.

9 THE COURT: Thank you, you may step down.

10 Do you want to put Mr. Smith back up on the stand now?

11 MR. GREENBERG: Your Honor, actually, I think -- well,
12 one, I think it might be --

13 THE COURT: Let me just say, I've determined that was
14 substantive also and not rebuttal, so that counts against time.

15 MR. PHELPS: I think the witness should maybe --

16 THE COURT: You can step down. You're excused. Thank
17 you.

18 THE WITNESS: Thank you.

19 (Witness exits.)

20 MR. FLOWERS: Your Honor, just for the record, we
21 obviously disagree that was substantive and that it was
22 actually rebuttal.

23 THE COURT: I understand.

24 MR. FLOWERS: Thank you, Your Honor.

25 THE COURT: All right.

1 **MR. GREENBERG:** Your Honor, we would respectfully like
2 to present the video designations of Lori Cannata. We
3 advised -- the Government put her on there, I guess either
4 their will or may-call list. We never got deposition
5 designations from them. We let them know last week we were
6 planning to call her, didn't hear anything. And I think I
7 asked again over the weekend. We were told they would
8 designate her entire direct examination. We sent them
9 deposition designations, I guess through ECF, probably
10 yesterday, maybe in the evening. And they may have other
11 designations, but I'm not sure why we didn't get them earlier,
12 frankly.

13 **MS. FARBER:** Your Honor, it was our understanding as a
14 *de bene esse* deposition that both sides would play the
15 examination in its entirety. Last night, Plaintiff's counsel
16 sent us a number of designations, the same filing that the
17 Court received, where they sort of pick portions of
18 Ms. Cannata's testimony from Mr. Greenberg's portion to play.

19 Now, under Federal Rule of Civil Procedure 32(a)(6):
20 Where a party seeks to introduce only part of a deposition, the
21 other party may require that party to present more testimony --

22 **THE COURT:** The so-called Rule of Completeness.

23 **MS. FARBER:** Yes. And so we would like additional
24 time to go through the deposition testimony and select
25 designations to complete Plaintiff's portion.

1 **THE COURT:** You don't want to publish the whole
2 deposition?

3 **MS. FARBER:** We're okay with putting the entire
4 deposition in as well.

5 **THE COURT:** How long is the entire deposition?

6 **MR. GREENBERG:** The entire deposition is long. I
7 mean, there's some parts, I think we could probably both agree
8 during a quick break, to cut out, I would hope. But I would
9 just ask this count against their time.

10 **THE COURT:** Whoever designates a certain portions, I
11 will count.

12 **MR. GREENBERG:** I think, you know, this is probably a
13 waste of time and inefficient. But, you know, we've wasted
14 time on misstatements about deposition designations before --

15 **THE COURT:** Ballpark, approximately how long do you
16 think your designations will take to play?

17 **MR. GREENBERG:** So at the request of lead counsel for
18 the Government, our folks incorporated their entire direct
19 examination to our clips and combined the two.

20 By the way, that reminds me that for Ms. Rapoza, I believe
21 the Court counted against us their deposition designations that
22 we also included. We took care of the tech issues for them, we
23 handled it, and I think we were penalized for our time
24 somewhat, if we can fix that. But --

25 **MS. FARBER:** Your Honor, If I may be heard on that.

1 **MR. GREENBERG:** Let me finish --

2 **THE COURT:** Let him finish.

3 Go ahead.

4 Stop the clock.

5 **MR. GREENBERG:** With respect to Ms. Cannata, you know,
6 we certainly have no objection to the Government adding some
7 passages, obviously, if they want to do that. But, you know, I
8 don't really know what they would add that would move the
9 needle. And I also don't know why they're not ready to do
10 this -- they weren't ready to -- why we didn't get the
11 deposition designations earlier.

12 **THE COURT:** All right. My question was: How much
13 time will be consumed by your -- just a ballpark. 10-minutes?
14 Two hours? What are we talking about?

15 **MR. GREENBERG:** It's hard because we included
16 30 minutes of theirs.

17 (Discussion held off the record.)

18 **MS. FARBER:** How long is the entire redacted --

19 **MR. GREENBERG:** So to answer Your Honor's question,
20 our position, I think, is something like 22 minutes and
21 something. And theirs is, like, 30 minutes, I believe. As it
22 stands now. As it stands now.

23 **THE COURT:** Ms. Farber, do you agree with those
24 breakdowns?

25 **MS. FARBER:** I don't think I do. The entire

1 deposition lasted something like three hours, give or take.

2 The Plaintiff's portion --

3 **THE COURT:** We can bring in another stopwatch and
4 time, and do the math at the end, if you want me to.

5 **MS. FARBER:** Your Honor, the point that I'd like to
6 make, is that according to Rule 32(a)(6), it just -- on the
7 Rule of Completeness, we get to require them to make additional
8 designations for completeness. Those --

9 **THE COURT:** And you're saying that shouldn't count
10 against you?

11 **MS. FARBER:** Correct. Those completeness designations
12 should count against their time.

13 **MR. GREENBERG:** Your Honor, that's --

14 **THE COURT:** Let me -- the Government is probably not
15 going to need the full 30 hours you've been allotted anyway,
16 are you?

17 **MS. FARBER:** That's true, Your Honor. But the reason
18 that you imposed those requirements was to keep this case
19 streamlined.

20 **THE COURT:** Well, we'll break it out by what the
21 Plaintiff designated, we'll time that, what the Government
22 designated, we'll time that, and we'll count that against each
23 party's time.

24 **MR. GREENBERG:** Your Honor, to answer the question of
25 how long the whole thing is, I think it's something like

1 2 hours 17 minutes. But I don't think there's any need to play
2 anywhere near the whole thing.

3 **THE COURT:** All right. Well, all I want to know is
4 will we know when to start and stop the stopwatch on who
5 designated what?

6 **MR. GREENBERG:** So Government counsel --

7 **THE COURT:** Just answer my questions. Will we have a
8 designation of who is designating what so we'll know when to
9 start the stopwatch for each side?

10 **MS. FARBER:** Your Honor, can I --

11 **THE COURT:** Just answer my question, please.

12 **MR. GREENBERG:** I am. I am. Your Honor, I'm trying.

13 So yes, because we're going to give a video clip report,
14 as we did for Ms. Rapoza, that shows you whose party is which
15 and how much time it takes. It's actually on the cover page of
16 the video clip. I think it's Plaintiff 141, if I remember
17 correctly.

18 **MS. FARBER:** Your Honor, as I mentioned, we just
19 received the designations last night. We can be ready to
20 provide counter designations. We just aren't sure why we're
21 being forced to provide them in this exact moment when Jed
22 Smith's testimony still hasn't finished.

23 **THE COURT:** I think it's fair to put Mr. Smith back
24 up, to give the Government time. If the designations just came
25 in last night, I think to give the Government some time during

1 the day today, even though we're receiving testimony, to do
2 that. I think that's a fair way to handle it. So let's do
3 that.

4 Let's put Mr. Smith back up.

5 And then, Ms. Farber, you can work on your designations as
6 we move along.

7 **MR. GREENBERG:** I would just ask Your Honor, I don't
8 think we've had a morning recess, I'm wondering if we can take
9 one.

10 **THE COURT:** All right. Since we started early, we'll
11 take two morning recesses. But let's plan on going until 1:00,
12 if we can, and break for lunch, which is a little later than
13 normal.

14 All right. We'll take a 15-minute recess.

15 **THE CLERK:** All rise. This Honorable Court is now in
16 recess.

17 (Whereupon, a recess was taken from 11:17 a.m. to
18 11:32 a.m.)

19 **THE CLERK:** All rise. This Honorable Court resumes in
20 session.

21 **MR. FLOWERS:** Your Honor, just a housekeeping measure.
22 Since the Court asked about the statute of limitations issue
23 with respect to Vipin Patel, what I neglected to tell the Court
24 was that the charges against him, the Government actually
25 dismissed those charges in the wake of Mr. Annappareddy's case.

1 **THE COURT:** I was aware of that, yes. But I was just
2 concerned he might say something under oath here that was
3 different from what he said under oath at the guilty plea. I
4 just was concerned about that.

5 **MR. FLOWERS:** Right. Well, he did. He certainly did.
6 But, again, that's the reason that the Government dismissed the
7 entire case against him, was, you know, in the wake of the
8 conviction being dropped against Mr. Annappareddy.

9 **THE COURT:** So we're going to go back to Mr. Smith on
10 the stand now?

11 **MR. GREENBERG:** Yes, Your Honor.

12 **THE COURT:** All right. When we come back from lunch,
13 ya'll want to hand up a written submission from each side on
14 that designation so that we can calibrate the shock clock back
15 and forth when the questions are asked. All right?

16 **MR. GREENBERG:** All right. And as I mentioned
17 earlier, we need to recalibrate a little bit for Rapoza because
18 we know that was included -- we included their . . .

19 **THE COURT:** We need to what? Say again. I didn't
20 understand you.

21 **MR. GREENBERG:** My apologies, Your Honor, I had two
22 microphones.

23 I was just saying that for Rapoza, you know, we took it
24 upon ourselves to include their designations in our
25 compilation --

1 **THE COURT:** All right. If you'll get that to me,
2 we'll back that time out.

3 **MR. GREENBERG:** Thank you, Your Honor.

4 So Mr. Annappareddy recalls Jed Smith to resume his
5 testimony.

6 (Witness enters.)

7 **THE COURT:** I'll remind you, you're still under oath.

8 **THE WITNESS:** Yes, Your Honor.

9 - - -

10 **DIRECT EXAMINATION (CONT.)**

11 - - -

12 **BY MR. GREENBERG:**

13 **Q.** Good morning, Mr. Smith.

14 **A.** Good morning.

15 **Q.** Late in the day on Friday, we had started your testimony
16 and went through your background and qualifications, and we
17 sort of touched on the limited scope of your assignment in the
18 criminal case, and the limited scope of your assignment in this
19 case, or at least this criminal case, I believe. Do you recall
20 that?

21 **A.** Yes.

22 **Q.** I just want to go into a little bit more detail about
23 that.

24 Mr. Smith, why don't we just kind of make this maybe go
25 faster. Put up Plaintiff's Exhibit No. 142, which is your

1 report. And if we could please turn to the ECF Page 4, which
2 would be Page 2 of the actual report. Thank you.

3 Mr. Smith, we don't need to actually read this, I'm just
4 showing it in case you need to refer to it.

5 But can you sort of just summarize, in one or two
6 sentences, if possible, the scope of your work, the limited
7 scope of your work in the criminal case?

8 A. In the criminal case, I was asked to look at the claims
9 data that the Government relied upon in its in-and-out analysis
10 and identify the volume of double-counting errors, secondary
11 claim errors, and then in a second declaration, the amount of
12 DC AIDS Drug Assistance Program replenishment drugs.

13 Q. And you were analyzing the work -- the so-called, quote,
14 "loss calculations and shortage calculations," end quotes,
15 presented by someone named Mary Hammond on behalf of the
16 Government in Mr. Annappareddy's trial in the criminal case,
17 correct?

18 A. That's correct.

19 Q. And to what extent, if any, did Ms. Hammond's analysis
20 count transfers?

21 A. Ms. Hammond's analysis did account for transfers.

22 Q. And the end date of her analysis, like the end date of
23 MEDIC 1495, was October 31st, 2012, right?

24 A. That's correct.

25 Q. And Ms. Hammond, however, counted more payors than

1 MEDIC 1495, right?

2 A. That's correct.

3 Q. All right. Let's move to the next pages of your report.

4 This is -- you know what, actually, I think we can probably
5 skip through some of this, just in the interest of time.

6 MR. GREENBERG: I believe Your Honor has reviewed this
7 report carefully?

8 THE COURT: I reviewed it earlier, yes.

9 MR. GREENBERG: Yeah. I think we can move through
10 this quickly.

11 BY MR. GREENBERG:

12 Q. So Paragraph 12 on Page 4 of your report, Mr. Smith, I
13 just want to turn your attention to that quickly. To what
14 extent, if any, did you notice differences between MEDIC 1495
15 and Ms. Hammond's calculations?

16 A. So the two major differences between those analyses were,
17 one, MEDIC 1495 looked at each of the Pharmacare pharmacies
18 independently, rather than as a consolidated entity, to account
19 for transfers. And then MEDIC 1495 used less payors than the
20 Government's loss calculation.

21 Q. And to kind of put this in layperson's terms, less payors
22 means they counted less billings, right?

23 A. That's correct.

24 Q. So you remember we talked on Friday late in the day how
25 there's sort of the billing side of things and the inventory

1 side of things?

2 A. Yes.

3 Q. And so by MEDIC 1495 counting fewer payors, there is lower
4 billings on the billing side, right?

5 A. That's correct.

6 Q. Okay. And if the inventory remains constant, that -- what
7 is the effect then, if there's lower billings?

8 A. There would be a higher surplus of pills purchased
9 compared to pills dispensed.

10 Q. All right. I think we can move on to the next paragraph,
11 just briefly, of your report.

12 Before we get to that, though -- actually, no, let's just
13 get to that.

14 You also, for purposes of this case, looked at a second
15 set of invoice reviews that MEDIC did, right?

16 A. That's correct.

17 Q. What was that called?

18 A. It was MEDIC 1884.

19 Q. And to what extent, if any, did that MEDIC set of invoice
20 reviews count transfers?

21 A. That analysis did not account for transfers, either. It
22 reviewed each pharmacy independently.

23 Q. And in addition to still not counting transfers, what
24 other differences between MEDIC 1884 and Hammond's in-and-out
25 analysis at trial, which did count transfers, did you observe?

1 A. In addition, the 1884 analysis did not have any claims for
2 the Maryland AIDS Drug Assistance Program, often referred to as
3 MADAP.

4 Q. And MEDIC 1884 is different in another respect, right, it
5 added payors?

6 A. Correct. 1884 had additional payors than MEDIC 1495.

7 Q. But MEDIC, in MEDIC 1884, if I'm understanding you
8 correctly -- I want to make sure the record is clear on this,
9 because it's important -- when it did MEDIC 1884, MEDIC removed
10 all MADAP claims, right?

11 A. That's correct. 1884 had a total quantity of MADAP
12 billings of zero.

13 Q. All right. Let's move to the next page in your report,
14 Table 1 on Page 5. Now, you prepared a table comparing the
15 number of total MADAP claims -- you call them MADAP units per
16 claims, because you're using expert speak, but could we just
17 call them "MADAP claims"?

18 A. Yes.

19 Q. All right. So I know the Court has reviewed those, but
20 just to kind of cut to the chase.

21 What number did you find for MEDIC 1495 in terms of the
22 MADAP units in the claims or the MADAP claims, and how did that
23 compare to MEDIC 1884?

24 A. The MEDIC 1495 had 115,755 pills billed on the claims for
25 MADAP. And 1884 had zero.

1 Q. Okay. All right. Let's move on to your opinions.

2 And specifically, to what extent, if any, did Judge George
3 Russell III, the former U.S. Attorney in the U.S. Attorney's
4 Office in the District of Maryland who presided over the
5 criminal case, to what extent, if any, did Judge Russell rely
6 on your findings, Mr. Smith, in the criminal case?

7 MR. PHELPS: Objection to all the preamble, Your
8 Honor. The Judge has said what he said.

9 THE COURT: All right. Sustained.

10 Go ahead. Just ask the question.

11 BY MR. GREENBERG:

12 Q. Mr. Smith, to what extent, if any, did Judge Russell, in
13 Mr. Annappareddy's criminal case, rely on your findings to make
14 findings, as far as you know?

15 A. It's my understanding that Judge Russell found that --
16 that Pharmacare had a surplus in drugs, based on my findings in
17 the criminal trial.

18 Q. And when you say a surplus of drugs, you mean there
19 actually wasn't any, quote, "shortage," as the Government told
20 the jury, right?

21 A. That's my understanding.

22 Q. And you, Mr. Smith, to what extent, if any, did you find
23 that the 4.5-million-dollar-plus loss calculation presented by
24 the Government in Mr. Annappareddy's trial was false?

25 MR. PHELPS: Objection, Your Honor. I don't see the

1 relevance of this.

2 **THE COURT:** Overruled.

3 **THE WITNESS:** Based on my analyses in the criminal
4 case, I found over 4.5 million -- or, I think, even
5 \$4.7 million of errors related to the Government's loss
6 calculation.

7 **BY MR. GREENBERG:**

8 **Q.** Okay. And just based on that fact alone, given the facts
9 we've discussed about how MEDIC 1495 didn't count transfers,
10 whereas Hammond did, and MEDIC 1495 counted fewer billings,
11 fewer payors, what would you expect, just from what we've
12 talked about so far, that you would find in MEDIC 1495?

13 **A.** An even greater surplus than Judge Russell found in the
14 criminal trial.

15 **Q.** Now, you were asked -- for purposes of this case, your
16 assignment was limited, as it was in somewhat different ways,
17 but also limited in the criminal case, right?

18 **A.** That's correct.

19 **Q.** What specifically were you asked to do in this case, just
20 in one or two sentences?

21 **A.** I was asked to look at MEDIC 1495 to see if it would have
22 similar errors to what I identified in the criminal case.

23 **Q.** And if we look at your report, it's Paragraph 16, starts
24 on Page 5 of your report, goes to Page 6, what methodological
25 flaws, if any, did you find in MEDIC 1495?

1 A. So first off, there were double-counting issues in
2 MEDIC 1495. It included a number of payors that I identified
3 as having double-counting issues in the criminal trial.

4 And then, number two, it did not account for store
5 transfers because it reviewed each pharmacy independently;
6 whereas the methodology put forth by Ms. Hammond at the
7 criminal trial looked at Pharmacare as a whole, which accounts
8 for store transfers.

9 Q. Okay. So -- and, again, these were the only two issues
10 you were asked to look at, right?

11 A. That's correct.

12 Q. So just to be clear, there's the MADAP duplicates, they're
13 entirely removed from 1884. And then there's the transfer
14 issue.

15 A. That's correct.

16 Q. All right.

17 Now, Mr. Smith, everyone makes mistakes. Let's turn to --
18 show Plaintiff's Exhibit 39.

19 So if we could just kind of focus on this. Mr. Smith,
20 this table you prepared for purposes of showing kind of your
21 findings from MEDIC 1495, right?

22 A. That's correct.

23 Q. So if MEDIC 1495 were adjusted to correct the two
24 methodological flaws that you looked at, this is what you had
25 found?

1 A. For seven example drugs, yes.

2 Q. Yes.

3 And you picked those seven example drugs how?

4 A. They were the seven largest HIV medications where
5 Ms. Hammond found a loss in the criminal trial, and they were
6 all over \$150,000 of loss in the criminal trial.

7 Q. And if you make the adjustments for the two methodological
8 errors that you found in MEDIC 1495 for these seven HIV drugs,
9 what shortage, if any, exists?

10 A. So if you look at Pharmacare as a whole, which is the
11 totals row, which looks at any surplus or shortage across all
12 the pharmacies and identifies whether there was a shortage or
13 surplus across all pharmacies, and then also removes any ADAP
14 claims consistent with MEDIC 1884, I found a surplus of all
15 seven of these HIV medications.

16 Q. I want to just quickly -- actually, you know what, I
17 mentioned everyone makes mistakes. And the reason I did that
18 is because there was a mistake, inadvertently, for one of these
19 tables, right, one of these sub-tables?

20 I'll point you to the Norvir tablets.

21 A. Yes.

22 Q. And you see how it -- so you see how MEDIC 1495 found a
23 total shortage for Norvir tablets of 2,994 units?

24 A. I see that, yes.

25 Q. And I want to show you a document you haven't seen before,

1 just to try to streamline things.

2 **MR. GREENBERG:** If that's okay with Your Honor?

3 **THE COURT:** All right.

4 **MR. GREENBERG:** And then I'll put up -- if I may, I'll
5 just step up there and kind of show what this does.

6 If we could show Plaintiff's Exhibit 42, please. And if
7 we could just scroll down to the next -- to the first page of
8 the Excel file. If we could go down to "Norvir tablets".

9 Actually, I'm sorry, let's back up. I should have explained
10 this first.

11 **BY MR. GREENBERG:**

12 **Q.** So, Mr. Smith, you haven't seen this before, right?

13 And just to kind of cut to the chase, what this is, this
14 is a document that a civil Assistant Attorney General prepared
15 showing, with the MEDIC 1495 data, what happened when you count
16 transfers.

17 **A.** Okay.

18 **Q.** And so the drug names are on the left. And then the
19 column U, where it shows "Difference," that shows what happens
20 after you just count transfers. All right?

21 **A.** Okay.

22 **Q.** So this is a true in-and-out analysis, like what Hammond
23 did, in terms of counting transfers. All right?

24 **A.** Okay.

25 **MR. GREENBERG:** All right. So let's scroll down to

1 "Norvir tablets," please. And let's focus in on -- let's just
2 do the tablets, highlight just the tablets, please. The last
3 one. Thank you.

4 **BY MR. GREENBERG:**

5 **Q.** And do you see there there's a surplus of 3,020 pills when
6 you count all transfers?

7 **A.** Yes, I do.

8 **Q.** And, Mr. Smith, do you or do you not agree that that is
9 the actual surplus, just by counting transfers for Norvir
10 tablets?

11 **A.** That is the correct number.

12 **Q.** I'm just going to write up here, this will be --
13 (Discussion held off the record.)

14 **MR. GREENBERG:** This will Plaintiff's Exhibit 150 for
15 identification for the moment.

16 All right. My handwriting is awful. But, Your Honor, if
17 we may, we will submit a -- sort of a corrected version of the
18 Excel that shows what it ought to look like once this little
19 glitch is fixed. All right?

20 **THE COURT:** All right.

21 **BY MR. GREENBERG:**

22 **Q.** So, Mr. Smith, we've established that the number -- if you
23 count all transfers and don't do anything to the MADAP
24 claims -- this is Norvir, and that's in the bottom left of
25 Exhibit 4 to your report, Plaintiff's Exhibit 39, right?

1 Norvir tablets?

2 A. Oh, correct.

3 Q. All right. So then you see how the shortage that's shown
4 there is 2,994?

5 A. Yes.

6 Q. So even just counting transfers, without even counting the
7 6,480 MADAP quantity -- and I guess "units" probably is more
8 accurate than "claims," but I think Judge Anderson gets it --
9 there's still a surplus even without removing the MADAP claims,
10 right?

11 A. Correct.

12 Q. I don't know if -- actually, the math is probably pretty
13 simple. It's, what, 26; is that right? Yeah, I think that's
14 right.

15 A. So what I had done was I accidentally pulled in the Norvir
16 caplet for the first one, for the first row for the D.C. store.
17 So it should be an additional 6,404 totals for the D.C. store.

18 Q. All right. Let's sort of walk us through that. I mean,
19 explain it to me kind of like I'm in elementary school.

20 A. If you can bring my table back up, that might be -- on the
21 screen, just so I have --

22 Q. Do you see a binder in front of you? If you go to tab --
23 not that one -- this one.

24 If you go to Tab 39, it should be there.

25 **MR. GREENBERG:** I'll provide, like I said, a corrected

Excel in legible format. My handwriting was abysmal.

THE COURT: Understood.

BY MR. GREENBERG:

Q. So scratch what I was trying to do to that. That was the wrong calculation.

Mr. Smith, why don't you show us the correct calculation. I just made a mistake.

Now, we saw with the Plaintiff's Exhibit 42, when all transfers are counted, there's this surplus, right?

A. Correct.

Q. Kind of explain to us, like, what was the error in the Norvir tab portion of Plaintiff's Exhibit 39, Exhibit 4 to your report, and how did it happen?

A. So to populate this spreadsheet, I went through and manually data enter -- data entering the information from each of the separate MEDIC 1495 pharmacy spreadsheets. And when I was doing that for Norvir Tab 100-milligram, for two stores, I accidentally data entered the Norvir capsule amount instead of the Norvir tablet amount. So for Pharmacare at D.C., I had originally put in a shortage of 390 pills, and Pharmacare at Reading, I had put in a surplus of 780 pills.

Q. Well, rather than saying what you put in, I mean, why don't you just say what -- what should the numbers be. Just to kind of make this move along a little faster.

A. For Pharmacare D.C., it should have been 6,404 as a

1 surplus.

2 Q. Okay.

3 A. And Reading should have been, like, not applicable. It
4 did not have any.

5 Q. Right.

6 And was there any other store?

7 A. That's it.

8 Q. It was really the D.C. store, right, that made the
9 difference?

10 A. It's the majority of the difference, yes.

11 Q. And I'm sorry, what's the other difference?

12 A. Reading, I had a surplus of 780, and should have been
13 zero.

14 Q. Oh, I misheard you.

15 Okay. And that's because you inadvertently counted the
16 interchangeable capsules as tablets or vice versa?

17 A. That's correct. I made a data entry error.

18 Q. All right.

19 And I think we've clarified that point sufficiently,
20 Mr. Smith. Do you have anything to add on this point?

21 A. Only that when you apply those two corrections, you get
22 the total surplus before accounting for MADAP for Norvir
23 tablets of 3,020 pills.

24 Q. So that's before removing 6,480 for MADAP.

25 A. Correct.

1 Q. All right.

2 MR. GREENBERG: Does Your Honor have any questions
3 about this point?

4 THE COURT: No.

5 MR. GREENBERG: All right. We would ask that this be
6 moved into evidence. And like I said, we'll put it in a
7 legible Excel format.

8 MR. PHELPS: We object, Your Honor. There was a whole
9 lot that went on, and it was errors, and Mr. Greenberg not
10 accurately writing down something that Mr. Smith said, and he
11 had to cross it out. I think it's confusing and unnecessary.

12 MR. GREENBERG: Well, it'll be cleaned up.

13 THE COURT: If you can give me a cleaned up, printed
14 one --

15 MR. GREENBERG: Yeah. And it will be cleaned up, and
16 he can certainly explore this on his cross, if he wants to.

17 THE COURT: Well, then you don't need to introduce
18 that chart. Just give me a cleaned up, and you-all confer and
19 make sure you get an agreement on what it should say.

20 MR. GREENBERG: That works.

21 THE COURT: Don't need the chart if I'm going to get a
22 cleaned up, printed version.

23 MR. GREENBERG: Understood, Your Honor. Thank you.

24 THE COURT: All right. Let's move forward.

25 BY MR. GREENBERG:

1 Q. Now, Mr. Smith, since you prepared this report, you were
2 provided with two documents that you didn't have before, right?

3 A. That's correct.

4 Q. And one of those is the transcript of Lori Cannata,
5 formerly known as Gillin's *de bene esse* deposition?

6 A. That's correct.

7 Q. And the other is Melissa Rapoza's deposition?

8 A. That's correct.

9 Q. Okay. And you reviewed those?

10 A. Yes, I did.

11 Q. And the *de bene esse* deposition of Ms. Cannata, I believe
12 it was taken on May 16th, 2023?

13 A. I don't remember the specific date, but it was in mid-May.

14 Q. Okay.

15 Now, to what extent, if any, did you find Lori Cannata's
16 testimony significant for purposes of your opinion about MADAP?

17 A. Similar to how MEDIC 1884 was applied, where MADAP was set
18 to zero pills, Ms. Cannata said if there was double-counting
19 that could not be accounted for, they would not use that
20 dataset.

21 Q. And just to be clear, did she say double-counting that
22 could not be accounted for, or a risk of double-counting?

23 A. I believe it was a risk of double-counting.

24 MR. GREENBERG: Your Honor, if I may just confer
25 briefly?

1 **THE COURT:** Certainly.

2 **MR. GREENBERG:** Nothing further at this time, Your
3 Honor.

4 **THE COURT:** All right.
5 Cross-examination.

6 - - -

7 **CROSS-EXAMINATION**

8 - - -

9 **BY MR. PHELPS:**

10 **Q.** Mr. Smith, I'm going to put your example chart here,
11 Plaintiff's Exhibit 39. You only looked at seven AIDS drugs
12 for purposes of this chart that you prepared, correct?

13 **A.** That's correct.

14 **Q.** But, in fact, MEDIC 1495 looked at every single drug that
15 Pharmacare dispensed, correct?

16 **A.** I don't know that to be true.

17 **Q.** Okay. You would agree with me that MEDIC 1495 looked at
18 approximately 76 drugs, correct?

19 **A.** That sounds correct.

20 **Q.** And so you looked at -- you only looked at seven of 76,
21 right?

22 **A.** I used seven examples, yes.

23 **Q.** And the top seven AIDS drugs was not a framework that was
24 used by the MEDIC to report its results to the Government,
25 correct?

1 A. I don't know.

2 Q. And the top seven AIDS drugs was not a format that the
3 Government used in the search warrant affidavit, correct?

4 A. I don't believe they specifically referenced the seven HIV
5 drugs.

6 Q. And the top seven HIV drugs was not a format that was used
7 in front of the grand jury on July 23rd, 2013, was it?

8 A. I do not know.

9 Q. And why did you pick seven and not eight?

10 A. They were -- I looked at a natural break point of 150,000,
11 so that was where the seven I picked.

12 Q. Isn't it true, Mr. Smith, that if we had -- accounting for
13 your opinions, eliminating MADAP, and aggregating the data
14 across all stores, isn't it true that the eighth drug would
15 still show a shortage?

16 A. I don't know.

17 Q. Okay. You never saw a charge that was prepared in this
18 case that showed that, accounting for your opinions, there
19 were, in fact, AIDS drugs that still had a shortage?

20 A. I don't believe so, no.

21 Q. And isn't it true that if we had applied your opinions,
22 removed MADAP, accounted for transfers, there still would have
23 been shortages of several drugs; isn't that right?

24 A. I don't know.

25 Q. Because you didn't look, right?

1 A. I know that when I looked in the criminal case,
2 Judge Russell found that there was a surplus, and 1495 looked
3 at fewer prescription plans than the commercial -- the criminal
4 case. So based on that, I would expect that there would be
5 surpluses when you correct for all double-counting errors.

6 Q. But you didn't look, did you?

7 A. I did not.

8 Q. And so you don't actually know, do you?

9 A. Other than what I know from the criminal case, I do not.

10 Q. Okay. And you have all nine -- excuse me, you have all of
11 the MEDIC 1495 spreadsheets, right?

12 A. I do.

13 Q. Okay. And so if you wanted to account for your opinions
14 for all 76 drugs, you could take every one of those spreadsheet
15 and cut and paste it into one, right, that's how you would
16 combine all of the store totals, right?

17 A. I don't know if that's specifically how I would do it,
18 but --

19 Q. You could.

20 A. -- someone could do that. But it was not the scope I was
21 asked to do.

22 Q. All right. But let's just walk through this
23 hypothetically. You take all of the MEDIC 1495 spreadsheets
24 and you put them into one, and then you sort it by drug, and
25 you remove the MADAP claims; that's something you could do,

1 couldn't it?

2 A. That is something someone could do, yes.

3 Q. Okay. But you didn't do that here?

4 A. I did not.

5 Q. Okay. How long do you think it would take for you to do
6 it?

7 A. Couple of hours.

8 Q. Okay. How many hours have you spent working on this case?

9 A. Probably somewhere around 30.

10 Q. Okay. So for a couple more hours, you could have looked
11 at MEDIC 1495 comprehensively, and you didn't do that, did you?

12 A. I disagree that I could have looked at MEDIC 1495
13 comprehensively.

14 Q. You could have done your seven examples for every drug in
15 MEDIC 1495, couldn't you?

16 A. It is possible, yes.

17 Q. And you didn't do it?

18 A. It was outside the scope of what I was asked to do.

19 Q. Did you have any discussions with Plaintiff about
20 expanding the scope beyond the seven drugs you looked at?

21 **MR. GREENBERG:** Objection to the extent that this gets
22 into work product, protected by Federal Rule of Civil Procedure
23 26.

24 **MR. PHELPS:** Your Honor, I think we get to understand
25 why he picked such a very narrow scope of opinion, when, in

1 fact, there's dozens more drugs in the analysis.

2 **THE COURT:** I think that's a proper subject matter for
3 cross, so I would overrule the objection. I don't think it's a
4 work product violation.

5 **MR. GREENBERG:** Your Honor, the communications between
6 parties' counsel and an expert are covered by work product
7 under the Rule, under the plain language rule.

8 **THE COURT:** I don't think he's asked for
9 communications yet. He just -- overruled for now. We'll see
10 how far he goes with this.

11 **MR. GREENBERG:** He's asking whether the topic
12 happened?

13 **THE COURT:** I'm sorry, say again.

14 **MR. GREENBERG:** If he's only asked whether the topic
15 was discussed, that's one thing. If he's asking about the
16 substance of the topic, that's another thing.

17 **THE COURT:** All right. Let's go forward. Let's see
18 what he asks.

19 Go ahead.

20 **BY MR. PHELPS:**

21 **Q.** What assumptions were you asked to use when performing
22 your expert analysis in this case?

23 **MR. GREENBERG:** Object to the extent that it would
24 reveal work product, otherwise -- okay.

25 **THE COURT:** Overruled. Overruled. I think it's a

1 proper question. I don't see a work product violation.

2 Go ahead, answer the question, if you can.

3 **THE WITNESS:** My recollection is I was asked to assume
4 that 1884 removed MADAP because of the identification and
5 double-counting issues.

6 **BY MR. PHELPS:**

7 **Q.** Were any of the assumptions or the scope of what you were
8 asked to do in this case intended to narrow or limit what you
9 were asked to do to only seven drugs?

10 **MR. GREENBERG:** Objection to the extent it calls for
11 work product.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** Can you ask that again, please.

14 **MR. PHELPS:** Can the court reporter read it back,
15 please.

16 (Reporter read back as requested.)

17 **THE WITNESS:** I'm sorry, I'm having trouble
18 understanding the question.

19 **BY MR. PHELPS:**

20 **Q.** Okay. I'll move on.

21 You would agree with me that the search warrant affidavit
22 did not limit its analysis to AIDS drugs, correct?

23 **A.** I don't believe so.

24 **Q.** Okay. You've seen the search warrant affidavit, right?

25 **A.** Correct.

1 **Q.** And you know that the Government did, in fact, account for
2 transfers on some of the drugs that are in the search warrant
3 affidavit, correct?

4 **MR. GREENBERG:** Objection. Mischaracterizes the
5 affidavit.

6 **THE COURT:** All right. Do you want to rephrase the
7 question.

8 **MR. PHELPS:** I don't think it mischaracterized it at
9 all. We did account for transfers on some drugs.

10 **THE COURT:** Overruled.

11 **MR. GREENBERG:** Well, we need to be specific about
12 which drugs and what kind of drugs.

13 **MR. PHELPS:** He's seen the affidavit. He knows what
14 I'm talking about.

15 **THE COURT:** I'll overrule the objection.

16 Go ahead.

17 **MR. GREENBERG:** Well, I would ask then we show him
18 Plaintiff's Exhibit 70, the affidavit, so he knows exactly what
19 we're talking about.

20 **THE COURT:** Get the affidavit for him and show it to
21 him.

22 **BY MR. PHELPS:**

23 **Q.** I'm showing you what is marked as Plaintiff's Exhibit 70,
24 Paragraph 15. Kaletra tab, 200 milligrams, Abilify, Lidoderm,
25 and Norvir cap 100 milligrams, all account for inter-store

1 transfers in the Lating affidavit, correct?

2 A. Which ones? I'm sorry, I was trying to read it.

3 Q. Sure.

4 Do you see the sentence in Paragraph 15 that says "For
5 instance"?

6 A. Yes.

7 Q. That sentence that begins "For instance" accounts for
8 inter-store transfers, doesn't it?

9 MR. GREENBERG: It might help if Government counsel
10 would refer to a line.

11 MR. PHELPS: I said the sentence beginning "For
12 instance."

13 THE COURT: That's the sentence in Paragraph 15, that
14 begins "For instance."

15 MR. PHELPS: I'll highlight it.

16 THE WITNESS: I'd have to go back and look at the
17 numbers, because I don't see anything that says it's accounting
18 for transfers.

19 BY MR. PHELPS:

20 Q. Okay. So you don't know whether or not this statement in
21 the search warrant affidavit accounts for transfers or not?

22 A. I would have to go back and double-check the numbers. I
23 don't remember.

24 Q. Okay. That is what you think the Government should have
25 done, is account for transfers, correct?

1 A. That's correct.

2 Q. Could you go ahead and take a look at Plaintiff's
3 Exhibit 42 that counsel just showed you.

4 MR. PHELPS: Our version of the exhibit did not have
5 every column. Would it be possible to use the exhibit that's
6 in evidence?

7 THE COURT: Yes, you can do that. Go ahead. Just get
8 it from the clerk, if you need to. Your version doesn't show
9 all the columns.

10 MR. PHELPS: It doesn't fit all of the columns on one
11 page, yes, Your Honor.

12 BY MR. PHELPS:

13 Q. Mr. Smith, were you present in the courtroom when
14 Plaintiff's Exhibit 42 was used to question Agent Mosley?

15 A. I don't believe so.

16 Q. Okay. But this is it what Mr. Greenberg showed you
17 earlier today, correct?

18 A. Correct.

19 Q. Okay. And Mr. Greenberg told you that this is something
20 that Assistant Attorney General Dykes prepared that was similar
21 to the complete in-and-out analysis that Mary Hammond performed
22 at trial, correct?

23 A. That's correct.

24 Q. Okay. And what is the first drug on the line that you see
25 on Plaintiff's 42?

1 A. "Abilify Solution 1 milligram per milliliter total."

2 Q. What is the figure on the far right-hand column?

3 A. It is negative 9,600.

4 Q. That would indicate a shortage?

5 A. Based on the analysis underlying this, that's what it
6 would appear to be.

7 Q. Okay. And is that the same number that's included in the
8 sentence of the affidavit that we just looked at?

9 A. Yes.

10 Q. And Abilify is not an AIDS drug, is it?

11 A. No, it is not.

12 Q. And so there's nothing wrong with this number in the
13 affidavit, is there?

14 MR. GREENBERG: Objection.

15 THE COURT: What's the basis?

16 MR. GREENBERG: Well, relevance. Because -- I don't
17 know if I should say it with the witness here, but there's a
18 relevance issue. We could excuse the witness, and I'd explain
19 why.

20 THE COURT: All right. Step outside, if you would.
21 Stop the clock.

22 (Witness exits.)

23 MR. GREENBERG: So, Your Honor, this is smoke and
24 mirrors here. The -- that drug that they just asked about was
25 only billed at Old Emmorton. The entire shortage is based on

1 data from, I believe, from 2007, 2008 and/or 2009, it's way
2 before the Lating affidavit.

3 And moreover, the Abilify Solution is interchangeable with
4 those massive surpluses of Abilify. This is a complete red
5 herring, and it's irrelevant to his opinion. I mean, we can
6 certainly spend time on it, if Your Honor wants, but it's
7 irrelevant.

8 **THE COURT:** Hold on.

9 The facts you recited in your objection just now, I'm not
10 sure they're all in evidence. And this is cross-examination.
11 So I'm inclined to overrule the objection and let you deal with
12 it on redirect. So overruled for now.

13 **MR. GREENBERG:** Okay. Understood, Your Honor.

14 **THE COURT:** Please bring the witness back.

15 (Witness returns.)

16 **MR. PHELPS:** Could I have the question read back.

17 (Reporter read back as requested.)

18 **THE WITNESS:** I don't believe I can agree with that
19 because there was double-counting across files beyond just
20 MADAP that may impact this number.

21 **BY MR. PHELPS:**

22 **Q.** Where is that in your report, Mr. Smith?

23 **A.** What exhibit was my report again?

24 **MR. GREENBERG:** Actually, Mr. Smith, it's not in the
25 binder because it was marked. 142. We can put it in the

1 screen. I think actually he's got control.

2 **MR. PHELPS:** You can take me off.

3 **THE WITNESS:** I don't remember the exact paragraph
4 number, but if you go to the section where I'm describing the
5 errors I found in the criminal case . . .

6 Go up to the first bullet, under A, "In my review of the
7 U.S. Government's loss calculations during Mr. Annappareddy's
8 trial, I found significant double-counting of claims across
9 these data files."

10 And then I go on to say that, specifically, I found
11 them -- large numbers related to MADAP, but there were
12 double-counting errors beyond just MADAP.

13 **BY MR. PHELPS:**

14 **Q.** How are we supposed to know which ones?

15 **A.** What do you mean?

16 **Q.** You said, "Specifically, I found significant
17 double-counting in secondary payors related to the MADAP
18 program." Right?

19 **A.** Correct. And I also attached my calculation from the
20 criminal trial.

21 **Q.** Mr. Smith, where on your seven examples does it account
22 for duplicate claims for any payor other than MADAP?

23 **A.** My seven examples were used to just show the impact of if
24 you were to treat MADAP as it was treated in 1884 and what the
25 impact would be on HIV medications.

1 Q. Okay. Clearly explain to us right now what the
2 double-counting errors are and identify the payor in
3 MEDIC 1495.

4 MR. GREENBERG: Object to the badgering.

5 THE COURT: Overruled.

6 THE WITNESS: So, generally speaking, every Medicaid
7 payor is a payor of last resort. And there is a program where
8 someone can be duly eligible under Medicare Part D and
9 Medicaid. And in those instances, Medicaid Part D is a primary
10 payor, and Medicaid is the secondary payor. In those
11 instances, there is double-counting because Medicare Part D is
12 listed as the primary payor. It's getting billed for the same
13 bottle of pills as Medicaid is. If you're counting those pills
14 twice, you're getting 60 pills, when only 30 pills were
15 dispensed. So those are the double-counting errors.

16 BY MR. PHELPS:

17 Q. Okay. Zero instances of that in your report, right?

18 MR. GREENBERG: Objection. Which report?

19 THE COURT: All right. State what --

20 BY MR. PHELPS:

21 Q. Your seven examples, zero examples of any Medicare Part D
22 and Medicare fee-for-service overlap in your seven examples,
23 correct?

24 A. My seven examples were not focused on that issue. They
25 were showing how 1495 would be impacted if it was treated like

1 1848.

2 **Q.** Okay. Hypothetically, if you could account for store
3 transfers and you could eliminate double-counting, that's what
4 the Government should have done in the affidavit, according to
5 you, right?

6 **A.** Those are the errors that I know go into 1495.

7 **Q.** Another one of the drugs mentioned as having a 12,000-unit
8 surplus is Lidoderm.

9 Do you see that?

10 **MR. GREENBERG:** Objection, relevance.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** I see that.

13 **BY MR. PHELPS:**

14 **Q.** It's not an AIDS drug, right?

15 **A.** Correct.

16 **MR. PHELPS:** Your Honor, I have a new exhibit. For
17 the record, it is MEDIC 1495 Pharmacare at Old Emmorton, date
18 of review 1/3/2007 to 1/6/2012.

19 **THE COURT:** All right. Any objection?

20 **MR. GREENBERG:** I have to look at it first.

21 Counsel, there's no Bates stamp. Is this from the actual
22 MEDIC 1495?

23 **MR. PHELPS:** Yep.

24 **MR. GREENBERG:** So the font on this is so small that I
25 can't read it. I do want to just take a moment to make sure it

1 is the same.

2 **THE COURT:** All right.

3 Stop the clock.

4 **MR. PHELPS:** Your Honor, may I be permitted to
5 proceed. And just, I'll stipulate if Mr. Greenberg finds that
6 this is not actually a copy of the exhibit, it won't come in,
7 but will allow us to proceed just for the sake of time?

8 **THE COURT:** But you want to ask the witness about it?

9 **MR. PHELPS:** Yes.

10 **MR. GREENBERG:** I mean, it'll take me probably
11 two minutes to confirm this.

12 **THE COURT:** Go ahead. The clock's not running. Go
13 ahead.

14 **MR. GREENBERG:** If counsel has a magnifying glass,
15 that would help, but . . .

16 **THE COURT:** How about we go ahead and break for lunch
17 right now and not slow down the process.

18 **MR. GREENBERG:** That is a great suggestion, in my
19 view, Your Honor.

20 **THE COURT:** All right. Let's just say, it's 12:25,
21 come back in an hour and 15 minutes. That will be 1:40.

22 We'll be in recess until 1:40.

23 **THE CLERK:** All rise. This Honorable Court is now in
24 recess.

25 (Whereupon, a recess was taken from 12:22 p.m. to 1:40

1 p.m.)

2 **THE CLERK:** All rise. This Honorable Court resumes in
3 session.

4 **THE COURT:** Over the lunch break, my law clerk and I
5 conferred in a meeting with Chief Judge Bredar. And in regard
6 to the schedule, I'd like to announce the following.

7 In the interest of justice, and in order to afford both
8 parties a fair trial in this case, and allow this Court to
9 receive the evidence in a normal, traditional way, I have no
10 choice but to announce the following.

11 We'll proceed as far as we can go in this case this week.
12 When we run out of witnesses, we will adjourn. I'll come back
13 to Baltimore the weeks of August the 7th and August the 14th to
14 conclude this trial. If anybody has a vacation, I'm sorry.
15 I'm sorry. Co-counsel will have to fill in.

16 **MR. PHELPS:** Your Honor --

17 **THE COURT:** I have no other choice. We've explored 10
18 different options, including going on Saturday and Sunday.
19 That's not possible. I'm not asking for comment. I'm telling
20 you what we're going to do.

21 **MR. PHELPS:** Just clarity, Your Honor, are we going to
22 sit the week of -- I can't remember the date. But Ms. Pascale
23 and Ms. Wilkinson were going to be back, that -- what would
24 have been the third week of trial. We're sitting then --

25 **THE COURT:** No. No need to come back up here just for

1 two days for them. They need to be available in August as
2 well.

3 **MR. PHELPS:** Okay. So we're not sitting after this
4 Friday?

5 **THE COURT:** We're going to go as far as we go until we
6 run out of witnesses. Nobody will be called out of order.
7 We'll just have to stop when we run out of witnesses and come
8 back in August.

9 **MS. FARBER:** Your Honor, are there any other dates in
10 August? I have a longstanding trip with my elderly father
11 abroad during that time.

12 **THE COURT:** Any date we pick is going to be
13 inconvenient for someone. I'm available the whole time, that's
14 the problem. I'm available the whole month, the whole summer.
15 I haven't taken a family vacation in a year and a half. But
16 I'm here to try this case.

17 **MR. FLOWERS:** Your Honor, I have a trial that's set
18 for August the 16th that's going to be at least a two-week
19 trial.

20 **THE COURT:** Any week we pick, somebody is going to
21 have a conflict. This is a four-and-a-half-year-old case. Is
22 your case four and a half years old?

23 **MR. FLOWERS:** No, Your Honor, it's not. It's a
24 criminal case, but it's not four and a half years old.

25 **THE COURT:** Blame it on me, just say Judge Anderson

1 insisted that this four-and-a-half-year-old case go forward to
2 trial.

3 Ms. Farber, I'm very sympathetic to your plight. But
4 you've got two other lawyers at your counsel table. So that's
5 what we're going to do. All right?

6 Can someone give me a preview of how far we're going to
7 get, how many more witnesses we're going to have, assuming that
8 we proceed in the normal order, no rebuttal witness is called
9 out of turn, just a normal order and we'll go until we run out
10 of witnesses, and we're waiting on Ms. Wilkinson and
11 Ms. Pascale.

12 **MR. FLOWERS:** Right, Your Honor. So I think we have
13 two other witnesses that I'm going to try to get here by
14 tomorrow. Wait, those are rebuttal witnesses.

15 **THE COURT:** We don't need any out-of-time rebuttal
16 witnesses. We're just going to go proceed in a normal fashion.

17 **MR. FLOWERS:** All right. Well, with that said, we
18 just have the Cannata deposition; Jed Smith, which we'll finish
19 up today --

20 **MR. GREENBERG:** And Pam Arnold we'll do today and/or
21 tomorrow. And, of course, the client is last.

22 **MR. FLOWERS:** That's rebuttal.

23 **THE COURT:** So will we finish tomorrow or the day
24 after tomorrow? I'm just asking because we need to make flight
25 reservations.

1 **MR. GREENBERG:** Your Honor, actually, the Government
2 has three witnesses --

3 **THE COURT:** No, they don't. We haven't gotten to the
4 Government's case in chief yet. No, we're going in a normal
5 fashion.

6 **MR. GREENBERG:** I apologize. I'm sorry with all the
7 moving parts, I misunderstood briefly. I understand. Sounds
8 like we can finish maybe even today, if not early tomorrow.

9 **THE COURT:** Well, I'm not going to go hold you to it.
10 We're not going to change any plane flights yet. Let's just
11 see how we proceed.

12 **MS. FARBER:** Your Honor, to clarify, the plan is for
13 Plaintiff to finish with their witnesses, with the exception of
14 Wilkinson and Pascale and Mr. Annappareddy.

15 **THE COURT:** Right.

16 **MS. FARBER:** And then we will adjourn?

17 **THE COURT:** Right.

18 **MS. FARBER:** Until August --

19 **THE COURT:** Are you unavailable both of those weeks?

20 **MS. FARBER:** Yes, Your Honor. I'm leaving on
21 August 5th, whatever the Saturday is, and returning on the
22 14th.

23 **THE COURT:** You're returning on the 14th?

24 **MS. FARBER:** Let me confirm.

25 **THE COURT:** Monday is the 7th, and Monday is the 14th.

1 **MS. FARBER:** I am leaving on the 5th and returning on
2 the 14th.

3 **THE COURT:** So you've got someone that second week
4 available?

5 **MS. FARBER:** Yes, Your Honor.

6 **THE COURT:** We'll just, we'll finalize it later. All
7 right?

8 Let's proceed with the next -- with the rest of this
9 witness, if we could.

10 Start the clock.

11 **BY MR. PHELPS:**

12 **Q.** Mr. Smith, I'm not going to go back to Plaintiff's
13 Exhibit 70, which is the search warrant affidavit. Did I -- at
14 least in this little Post-it note that I put on top of the
15 document projector, did I correctly write down the quantities
16 of Abilify and Lidoderm that are in the search warrant
17 affidavit?

18 **A.** Yes.

19 **Q.** Turning back to Plaintiff's Exhibit 42, which the
20 Plaintiff showed you, is the number for Abilify that I wrote
21 down from the search warrant the same as what's in Plaintiff's
22 Exhibit 42?

23 **A.** Yes.

24 **Q.** And is the number that I wrote down on the note from the
25 search warrant affidavit for Lidoderm the same as what's in

1 Plaintiff's Exhibit 42?

2 A. Yes.

3 Q. Mr. Smith, I'd like to show you what I believe is now
4 Plaintiff's Exhibit 98, which is what, when we broke to
5 review -- and I'm going to hand you a copy of it.

6 MR. GREENBERG: I believe you said Plaintiff's
7 Exhibit 98?

8 MR. PHELPS: I'm sorry, Defense Exhibit 98. I
9 apologize.

10 MR. GREENBERG: And, Your Honor, Judge Anderson, we
11 did confirm over the break that this does appear to be the
12 Tab 3 of the Excel file for Old Emmorton in MEDIC 1495.

13 THE COURT: It does appear to be correct, in other
14 words?

15 MR. GREENBERG: It does.

16 THE COURT: Very good.

17 BY MR. PHELPS:

18 Q. Mr. Smith, I'm going to try to zoom, if I can.

19 This is a spreadsheet that you would have looked at in
20 preparing your opinions in this case, correct?

21 A. Yes.

22 Q. Do you see the first drug listed as Abilify Soluble
23 1 milligram?

24 A. I see that, yes.

25 Q. Okay. And the point is, it's the very first drug listed.

1 And do you see the second to right-hand column is the unit
2 price for Abilify?

3 A. From the PDE data. It's an average price.

4 Q. It's an average price.

5 And what is an average price for Abilify from the PDE
6 data?

7 A. \$2.98.

8 Q. And do you see how that shortage figure is 9,600, it's
9 preceding it in the chart?

10 A. I see that, yeah.

11 Q. So the entire shortage is from Old Emmorton, correct?
12 That's what that shows?

13 A. That's what it appears to show.

14 Q. According to the MEDIC 1495 spreadsheet, what is
15 9,600-dollar shortage times \$2.98 unit price?

16 A. Based on the spreadsheet, it's 28,725.92.

17 Q. Mr. Smith, I'm showing you what is marked as Defense
18 Exhibit 37. This document is in evidence, for the record, and
19 it is Invoice Review 3 spreadsheet for Pharmacare at Plumtree.

20 Do you see the title of it up at the top with the list of
21 the pharmacy next to it -- underneath, rather?

22 A. Yes.

23 Q. Okay. And I've highlighted Lidoderm.

24 Do you see that?

25 A. I see it highlighted, yes.

1 Q. Okay. And I carried the highlighting over all the way to
2 the right of the page. Do you see the second-to-last column?

3 A. Yes.

4 Q. And do you see it says \$7.49?

5 A. I see that, yes.

6 Q. If we go high up to the second-to-last column, that's the
7 price per unit.

8 Do you see that?

9 A. I see that, yes.

10 Q. I'm going to put my calculator on the screen.

11 Using the average unit price of \$7.49, is the amount
12 associated with this quantity of Lidoderm \$96,913.11?

13 A. Again, I believe the \$7.49 was specific to the Plumtree
14 store, not all of the stores.

15 Q. So the price changed at the store?

16 A. I believe so, yes.

17 Q. Do you think the price was significantly different at any
18 other pharmacy?

19 A. Hard to follow the lines across, but it appears . . .

20 Q. So to be clear, Mr. Smith, this is only the Plumtree
21 store, so you're not going to see other stores.

22 A. I have the --

23 Q. Oh, you have the Old Emmorton one. Okay. Yeah, let's
24 look at that.

25 A. I'm trying to follow it across, it's really small. But I

1 think it's either 5.46 or 6.46.

2 Q. Okay. So maybe a dollar or two less?

3 A. Yeah, about 20 percent less, or so.

4 Q. I'm going to go back to Plaintiff's Exhibit 70. And I'm
5 going to point you to the 2,672,067-dollar figure. Do you know
6 how the Government came up with that figure?

7 A. I do not.

8 Q. Does that account for any transfers at all?

9 A. I do not know.

10 Q. Okay. Did the Government say that that figure accounted
11 for transfers across all stores, like it did with respect to
12 Lidoderm, and Kaletra, and Abilify?

13 MR. GREENBERG: Objection. What document are we
14 talking about now?

15 MR. PHELPS: It's on the screen. Plaintiff's
16 Exhibit 70.

17 THE WITNESS: It does not appear to account for
18 transfers.

19 BY MR. PHELPS:

20 Q. And it doesn't say that it does, does it?

21 A. It doesn't say one way or the other.

22 Q. It says "at one or more pharmacies," right?

23 A. It says, "59 out of the 76 prescriptions had a shortage at
24 one or more pharmacies," yes.

25 Q. I'm showing you what is marked as Plaintiff's Exhibit 47.

1 It's an email from Michael A. DiPietro.

2 Do you recall being in the courtroom when Agent Mosley was
3 asked about this email?

4 A. Yes.

5 Q. Okay. And do you recall that the figure that was shown in
6 the spreadsheet attached to this was within one dollar of the
7 figure that was used in the search warrant affidavit?

8 A. I don't remember that part. It might have been when he
9 was readdressing it.

10 Q. Had you seen this email before watching Agent Mosley
11 testify?

12 A. Are you talking about the one you just --

13 Q. Plaintiff's Exhibit 47, the email from Judge Michael
14 DiPietro.

15 A. No, I do not.

16 Q. Okay. Have you seen any of the actual correspondence that
17 occurred between the Government and the MEDIC in this case,
18 other than, perhaps, the cover letter?

19 A. And the underlying files of 1495. But beyond that, I
20 don't believe I've seen anything other than what I saw during
21 Mr. Mosley's testimony.

22 Q. So you have not seen, for example, the email -- any email
23 discussions that took place over email between the Government
24 team and the MEDIC team?

25 A. Correct.

1 Q. Other than perhaps what you saw during Agent Mosley's
2 testimony?

3 A. Correct.

4 Q. Did you ask to see that information?

5 A. No.

6 Q. Why not?

7 A. It was not part of the scope of my review. I was asked to
8 look at 1495, specifically.

9 Q. Wouldn't it be interesting for you to know the questions
10 that the MEDIC had or the information that they asked for or
11 any concerns that they encountered in performing this analysis?

12 A. No.

13 Q. Why not?

14 A. My scope was to look at the analysis in 1495 and see if it
15 had the same issues I identified in the criminal trial. So
16 that was the extent of my review.

17 Q. In the criminal trial, you found significant duplication
18 involving Medicare and Medicaid claims that were administered
19 by a private company called Optimum RX, correct?

20 MR. GREENBERG: Objection, mischaracterizes what
21 Optimum RX did.

22 THE COURT: Overruled. I'll allow it for what it's
23 worth.

24 THE WITNESS: Could you repeat the question.
25

1 BY MR. PHELPS:

2 Q. Sure.

3 You found data duplication issues associated with a
4 company called Optimum RX, right?

5 A. The data file that was titled Optimum RX?

6 Q. There was no Optimum RX data file in MEDIC 1495, was
7 there?

8 A. That's correct, there was not.

9 Q. Okay. And you also found significant errors in the
10 Government's calculation related to the D.C. AIDS Drug
11 Assistance Program, correct?

12 A. That's correct.

13 Q. And the D.C. AIDS Drug Assistance Program was not used in
14 MEDIC 1495, correct?

15 A. That's correct.

16 Q. In your chart -- back to Plaintiff's Exhibit 39 -- you
17 removed MADAP in its entirety, correct?

18 A. That's correct.

19 Q. Because that's what was done in MEDIC 1884; that's what
20 you said, right?

21 A. That's correct.

22 Q. But, in fact, in the criminal case, you were able to
23 quantify to the pill the extent of the overlap between MADAP
24 and any other payor, correct?

25 A. I was able to do a claim level analysis in the criminal

1 trial, yes.

2 Q. And you did not find that 100 percent of MADAP overlapped
3 with another payor, correct?

4 A. I don't recall.

5 Q. Okay. All of those spreadsheets are attached to your
6 report in this case, aren't they?

7 A. Yes.

8 Q. And so if we wanted to, we could look and we could count
9 the amount of MADAP overlap you found in those lengthy
10 spreadsheets, correct?

11 A. Correct.

12 Q. And we could compare it to the total amount of MADAP
13 claims that are reported in the Government's trial damages,
14 right?

15 A. Correct.

16 Q. And that would tell us, essentially, the percentage of the
17 overlap?

18 A. Percentage of the overlap, I was able to identify, yes.

19 Q. Isn't it an overcorrection to remove MADAP in its
20 entirety?

21 A. Again, the purpose of my analysis was to show how 1495
22 would have reflected if it was performed the same as 1884.

23 Q. So my question is: Isn't removing MADAP in its entirety
24 an overcorrection?

25 MR. GREENBERG: Objection. Asked and answered.

1 **MR. PHELPS:** He didn't answer it.

2 **THE COURT:** Overruled.

3 **THE WITNESS:** Without having the specific data
4 underlying 1495, it would be appropriate to remove it because
5 of the risk of double-counting consistent with Ms. Cannata's
6 testimony.

7 **BY MR. PHELPS:**

8 **Q.** Okay. So you found data duplication errors in MADAP,
9 right?

10 **A.** I did, yes.

11 **Q.** And you've testified previously that that may not be all
12 of the duplication errors that are in MEDIC 1495, right?

13 **A.** That's correct.

14 **Q.** And so much so, that you testified that you could not do a
15 comprehensive reevaluation of MEDIC 1495 if you wanted to,
16 could you?

17 **A.** With the information I have right now, no.

18 **MR. GREENBERG:** Objection.

19 **BY MR. PHELPS:**

20 **Q.** You're not actually confident that any numbers on
21 Plaintiff's Exhibit 39 are actually correct, are you?

22 **MR. GREENBERG:** Objection.

23 **THE COURT:** On what basis?

24 **MR. GREENBERG:** I can restore it on redirect. That's
25 okay.

1 **MR. PHELPS:** Can I have the question read back,
2 please.

3 (Reporter read back as requested.)

4 **THE WITNESS:** With the corrections that I walked
5 through with Mr. Greenberg, I believe I do accurately reflect
6 the amounts that are in 1495 and how they would be reflected if
7 they were treated like 1884.

8 **BY MR. PHELPS:**

9 **Q.** But I'm asking you if the figures, the per-pharmacy
10 figures, these numbers that you've put in your chart, do you
11 believe them to be correct, free from duplication of any kind?

12 **A.** Do I think there's no duplication even with the final
13 numbers I reflect here?

14 **Q.** Correct.

15 **A.** No, I think there's probably additional duplications.

16 **Q.** So these number are not right, are they?

17 **A.** Again, they accurately reflect the scope in what I
18 describe them to be, which is treating 1495 like 1884 and
19 removing MADAP.

20 **Q.** So you can't testify to a reasonable degree of
21 professional certainty that there is a shortage or a loss of
22 any drug in MEDIC 1495, can you?

23 **MR. GREENBERG:** Objection, mischaracterizes what he
24 said, and he already has testified to that.

25 **MR. PHELPS:** I asked him.

1 THE COURT: Overruled.

2 THE WITNESS: Sorry, can you ask the question again.

3 MR. PHELPS: Could I have it read back, please.

4 (Reporter read back as requested.)

5 THE WITNESS: I disagree with that.

6 BY MR. PHELPS:

7 Q. Okay. So do you know whether or not there's shortages or
8 losses of every drug in MEDIC 1495?

9 A. I don't think that's how you phrased the question
10 originally.

11 Q. So what's the actual shortage or surplus of Kaletra?
12 Let's pick one that you picked. What is the actual, real
13 shortage of Kaletra tab, 200, 50 milligrams?

14 A. I don't know the specific number. I know in the criminal
15 trial where there were additional payors included in the
16 analysis, Judge Russell found that there were surpluses across
17 those drugs.

18 Q. You don't know the specific number for any drug in
19 MEDIC 1495, do you?

20 A. I do not.

21 Q. A model is just that, it is not a 100 percent perfect
22 depiction of reality, correct?

23 A. I think that would depend on a case-by-case basis.

24 Q. Okay. There's things that an in-and-out analysis just
25 can't account for, right?

1 A. Again, I think that would be a case-by-case.

2 Q. Well, there's assumptions in the model, right?

3 Assumptions in an in-and-out analysis, right?

4 A. Potentially.

5 Q. Okay. And one of the assumptions that you've used is that
6 there's medications transferred between stores, correct?

7 A. Consistent with how Ms. Hammond applied the analysis in a
8 criminal trial, yes.

9 Q. But for purposes of the model, there's nobody at any time
10 that input actual transfer data into the model, correct?

11 MR. GREENBERG: I'm going to object to the counsel
12 hollering at the witness.

13 MR. PHELPS: I'll tone it down a little bit.

14 THE COURT: All right. Tone it down.

15 THE WITNESS: Would you restate the question?

16 BY MR. PHELPS:

17 Q. Sure. I'll ask a different question.

18 If you want a model to be as accurate as possible, you
19 want to include as many sources of information that you have
20 available to you as possible, correct?

21 A. As much reliable information as you can, yes.

22 Q. And there was a lot of information that was not included
23 in MEDIC 1495; isn't that right?

24 A. I'm not sure if that's correct.

25 Q. Private pay claims were not included in MEDIC 1495,

1 correct?

2 A. There were not private pay claims in 1495, but I don't
3 know what the volume of private pay claims are.

4 Q. There was no D.C. Medicaid in MEDIC 1495, correct?

5 A. That's correct. But that was included in the criminal
6 trial.

7 Q. There was no Pennsylvania Medicaid in MEDIC 1495, correct?

8 A. That's correct. But that was in the criminal trial.

9 Q. There's no HIV Drug assistance programs in D.C.,
10 North Carolina, or Pennsylvania in MEDIC 1495, correct?

11 A. Correct. But at least DC ADAP was in the criminal trial.

12 Q. And MEDIC 1495 did not include Maryland managed care
13 organizations, correct?

14 A. Correct. But, again, those were included in the criminal
15 trial.

16 Q. Okay. I want to stick to MEDIC 1495.

17 You understand that, in this case, that Medicaid was
18 Pharmacare's largest source of revenue, correct?

19 A. I don't remember specifically doing that analysis.

20 Q. Okay. It was a significant portion of their revenue; is
21 that accurate -- or their claims prep, their claims?

22 A. That's my recollection.

23 Q. And you understand that in Maryland, a significant portion
24 of Maryland Medicaid is administered by managed care
25 organizations, correct?

1 A. I don't know the relative volume of managed care versus
2 fee-for-service Medicaid.

3 Q. But you know from your work in the criminal case that
4 there was a significant volume of MC of claims at the criminal
5 trial, right?

6 A. I don't remember if that's true once you correct for the
7 double-counting.

8 Q. Okay. And so we've identified at least -- one, two,
9 three, four, five, six -- seven different sources of
10 information that were not in MEDIC 1495, correct?

11 A. I think that's correct.

12 Q. And you don't really have an accurate -- or you don't have
13 a complete picture of what's going on at Pharmacare without all
14 of those data sources, correct?

15 A. I think that's correct. That's why I focused on my
16 analysis in the commercial -- or criminal case.

17 Q. And the Government informed the magistrate judge in the
18 search warrant affidavit about the claims that it was not --
19 that were not included in MEDIC 1495, correct?

20 A. Sorry, I think I misheard the question.

21 Q. Sure.

22 The Government -- the search warrant affidavit contains a
23 listing of claims sources that were not included in MEDIC 1495,
24 correct? I can put it up there.

25 A. Yeah.

1 Q. It's, I believe, the last sense of Paragraph 14,
2 Plaintiff's Exhibit 70.

3 A. It does say that, yes.

4 Q. Do you recall being -- I'm showing you Defense Exhibit 42.
5 Do you recall being in the courtroom when Agent Mosley was
6 asked about this May 20th, 2013, email from Cathy Pascale?

7 A. I don't remember this specific one.

8 Q. Okay. If Maryland Medicaid -- if Maryland MCOs had been
9 included in MEDIC 1495 accurate data, free of duplication, it
10 could have only had the effect of increasing the losses in this
11 case, correct?

12 MR. GREENBERG: Objection. Mischaracterizes a bunch
13 of things.

14 THE COURT: Overruled.

15 THE WITNESS: If there were any claims that were not
16 duplicative of other claims that were already included, then it
17 would either decrease a surplus or reduce the total volume of
18 available pills.

19 BY MR. PHELPS:

20 Q. That change can only go in one direction, correct?

21 A. Or it could have no --

22 Q. Or no change, fair enough.

23 Private pay -- if private pay claims had been included in
24 MEDIC 1495, it could have only had an effect of increasing a
25 shortage or decreasing a surplus or, at best, no effect, right?

1 **MR. GREENBERG:** Object to relevance, given the scope
2 of the affidavit issue.

3 **THE COURT:** I don't agree.
4 Overruled.

5 **THE WITNESS:** That's correct.

6 **BY MR. PHELPS:**

7 **Q.** And one thing that an in-and-out analysis, most of the
8 time, can account for is inventory that is on the shelf as of
9 the last date of the analysis, correct?

10 **A.** The last date and the first date of the analysis.

11 **Q.** You understand that MEDIC 1495 went back to the beginning
12 of Pharmacare or at least very, very early on in Pharmacare; is
13 that right?

14 **A.** I don't know for sure.

15 **Q.** Okay. Well, let's just stick with the inventory that's on
16 the shelf as of the end of the analysis. If you could
17 incorporate that data, it could only have the effect of
18 increasing a shortage or decreasing a surplus, correct?

19 **A.** Or having no effect if there was no inventory on the
20 shelf.

21 **Q.** Okay. You would expect that Mr. Annappareddy had quite a
22 bit of inventory on his shelf at his nine pharmacies as of the
23 last date of the MEDIC 1495 analysis, correct?

24 **MR. GREENBERG:** Objection, calls for speculation.

25 **MR. PHELPS:** Speculation that a pharmacy had

1 inventory?

2 **THE COURT:** Overruled.

3 **THE WITNESS:** I think it would depend drug by drug,
4 and whether that drug is still being dispensed by his pharmacy,
5 and his ordering practices.

6 **BY MR. PHELPS:**

7 **Q.** Okay. If, hypothetically, you could quantify that
8 Mr. Annappareddy had \$3 million of product on his shelf as of
9 the last date of the analysis, that would significantly
10 increase the shortage figures, wouldn't it?

11 **A.** Again, it depends on which drugs that inventory is made up
12 of, but if I was going to use pending inventory, I would also
13 want to use beginning inventory.

14 **Q.** Okay. And isn't it true that Mr. Annappareddy testified
15 at his criminal trial that when he was indicted in July of
16 2013, he had 3 to \$4 million of product on his shelf?

17 **A.** I don't know.

18 **Q.** If he had the same amount of product on his shelf at the
19 end of the MEDIC analysis as he did when he was indicted, that
20 would significantly affect the shortage figures in MEDIC 1495,
21 correct?

22 **MR. GREENBERG:** Objection, he said -- lack of
23 foundation. He said he didn't know.

24 **THE COURT:** I'm sorry, say again.

25 **MR. GREENBERG:** Objection, lack of foundation. He

1 said he didn't know to the foundation question.

2 **MR. PHELPS:** I asked a hypothetical.

3 **THE COURT:** Assume it's a hypothetical, I'll allow it.
4 But I understand it's hypothetical only.

5 **THE WITNESS:** Can you repeat the question.

6 **MR. PHELPS:** Can I have it read back, please. I'm
7 sorry.

8 (Reporter read back as requested.)

9 **THE WITNESS:** Again, you would have to do that
10 analysis on a drug-by-drug basis because it depends on what
11 that inventory is and whether there was surpluses or shortages
12 for those drugs.

13 **BY MR. PHELPS:**

14 **Q.** Well, you would have to do it by drug, I agree. But if
15 you've got 3 to \$4 million of product, you would expect it to
16 have a pretty significant influence even on a drug-by-drug
17 basis, wouldn't you?

18 **MR. GREENBERG:** Objection, mischaracterizes -- I'll
19 withdraw the objection.

20 **THE COURT:** All right.

21 **THE WITNESS:** Sorry, I need the question read back.

22 (Reporter read back as requested.)

23 **THE WITNESS:** And I don't think I can draw that
24 conclusion as I sit here right now, because if the inventory on
25 the shelf is for products that already had a significant

1 surplus, then there would be no impact on the analysis.

2 **BY MR. PHELPS:**

3 **Q.** So accounting for transfers -- again, I think I asked this
4 question previously, but it's an assumption of the model, it's
5 not based on any actual transfer data, correct?

6 **A.** It's based on the aggregate amount of purchases and
7 dispenses across all of the Pharmacare stores. There's no
8 specific dataset on the amount transferred.

9 **Q.** And let me see if I can get -- I want to take a look at
10 Kaletra tab, 250 milligrams.

11 Do you see that?

12 **A.** I see that.

13 **Q.** So Plumtree has a significant shortage, and Old Emmorton
14 has a significant surplus, even in your adjusted figures,
15 right?

16 **A.** We're looking at the column in green, right?

17 **Q.** Correct.

18 **A.** Correct.

19 **Q.** And, in fact, Old Emmorton and Plumtree are actually right
20 down the road from each other; is that right?

21 **A.** I believe that's correct.

22 **Q.** Okay. But there's also a shortage at Pharmacare at
23 Reading in Reading, Pennsylvania, correct?

24 **A.** Correct.

25 **Q.** In order for the transfer assumption to be true, that

1 would mean that Pharmacare is transferring surplus from
2 Old Emmorton to Reading, Pennsylvania, correct?

3 A. That's correct.

4 Q. Do you know how far it is from Old Emmorton, the
5 Old Emmorton store, to Reading, Pennsylvania?

6 A. I do not.

7 Q. And, at least for purposes of the model, this is assuming
8 that Pharmacare is also transferring drugs from Old Emmorton
9 Road to Greensboro, North Carolina, correct?

10 A. That's correct.

11 Q. Do you know how far itself from Old Emmorton Road to
12 Greensboro, North Carolina?

13 A. I do not.

14 Q. Okay. Is that a reasonable assumption, the transfers,
15 when you have pharmacies that are spreads apart in the way that
16 Pharmacare was?

17 A. I think you would have to ask Mr. Annappareddy how he ran
18 his business.

19 Q. It doesn't make any sense, does it, to order drugs from
20 Pennsylvania and transfer them to North Carolina, does it?

21 **MR. GREENBERG:** Objection, asked and answered, and
22 he's hollering again.

23 **MR. PHELPS:** There's nothing wrong with the question.

24 **THE COURT:** I'll overrule the objection.

25 **THE WITNESS:** I don't think I agree with that.

1 **BY MR. PHELPS:**

2 **Q.** Okay. You think it would make sense, from a business
3 perspective, to transfer drugs from Maryland to North Carolina?

4 **A.** I think it could make business sense to transfer surplus
5 inventory from one store to another store.

6 **Q.** It would be most efficient to just order it where you're
7 going to dispense it, right?

8 **A.** I think it would depend on the circumstances of why you
9 needed that medication and how quickly you needed it.

10 **Q.** Have you ever seen any documentation of any of the
11 transfers we've discussed here?

12 **A.** No, I have not.

13 **Q.** How many cutting and pasting or copying or transcription
14 errors are there in this chart?

15 **A.** I believe there was three.

16 **Q.** Okay. Seven drugs, and three errors, right?

17 **A.** Multiple data entries per drug, but yes.

18 **MR. PHELPS:** Okay. No further questions. Thank you.

19 **THE COURT:** All right.

20 Any additional questions?

21 **MR. GREENBERG:** Yes, Your Honor.

22 - - -

23 **REDIRECT EXAMINATION**

24 - - -

1 **BY MR. GREENBERG:**

2 **Q.** Let's turn back to Tab 70 of the Lating affidavit, Page 9.

3 That sentence, just before where Paragraph 15 starts,
4 where it says, "Once the data is included in the review, the
5 shortages identified at each location could only increase."

6 Do you see that?

7 **A.** I see that.

8 **Q.** That's only true if those payors that weren't included
9 actually paid for the drugs that MEDIC 1495 considered, right?

10 **A.** That's correct.

11 **Q.** And, in reality, the D.C. AIDS Drug Assistance Program
12 doesn't function like the Maryland AIDS Drug Assistance
13 Program, does it? Or did it?

14 **A.** It did not.

15 **Q.** The D.C. AIDS Drug Assistance Program had a replenishment
16 model, didn't it?

17 **A.** Correct, it did.

18 **Q.** And that means that instead of paying money for HIV drugs,
19 the D.C. AIDS Drug Assistance Program provided inventory of HIV
20 drugs back to Pharmacare?

21 **A.** That's correct.

22 **Q.** Now, MCOs. If MCOs don't pay for HIV drugs, and they
23 don't pay for any other drugs for MEDIC 1495, that line of
24 questions that you were asked is irrelevant, right?

25 **MR. PHELPS:** Objection, leading. Assumes facts not in

1 evidence.

2 **THE COURT:** Well, overruled. I'll allow it.

3 Go ahead.

4 **THE WITNESS:** If the payor did not pay for a drug
5 under the 1495 analysis, then it would have no impact on an
6 in-and-out analysis.

7 **BY MR. GREENBERG:**

8 **Q.** And would or not the same -- actually, in your expert
9 opinion, Mr. Smith, would there be a problem or a risk of
10 duplicate claim errors that -- like the one that caused MEDIC
11 to remove all of MADAP from 1884, like the one that Lori
12 Cannata testified would have caused her to remove all of the
13 MADAP claims from 1495, if some other state, their AIDS drug
14 program was a secondary payor, would that be the same problem?

15 **MR. PHELPS:** Objection to the form of the question.

16 **THE COURT:** Overruled.

17 **BY MR. GREENBERG:**

18 **Q.** Or a similar problem?

19 **A.** Any payor that functions as a secondary payor would have a
20 risk of double-counting.

21 **Q.** So I want to bring you back to what you said about
22 Ms. Cannata's testimony about removing datasets with the risk
23 of double-counting errors. Would that testimony or would it
24 not, apply to what MADAP would have done, in your opinion,
25 based on Ms. Cannata's testimony, if, say, the other states'

1 HIV program, say North Carolina or Pennsylvania, were secondary
2 payors?

3 A. My understanding of Ms. Cannata's testimony is that if
4 there is a risk of double-counting, then they would not include
5 those.

6 Q. So your understanding is that the entire dataset would be
7 removed of that risk -- would have been removed, had they
8 known?

9 A. That's my understanding of Ms. Cannata's testimony and
10 what's reflected in MEDIC 1884.

11 Q. This business about inventory on the shelf, and the
12 supposed testimony about 3 or \$4 million on the shelf, if we
13 assume that all of that 3 or \$4 million on the shelf is for
14 drugs that were included in MEDIC 1495, to what extent, if any,
15 would that inventory on the shelf matter?

16 A. It would not matter.

17 Q. Not at all?

18 A. If it's not for the drugs on 1495, it wouldn't matter.

19 Q. It would be irrelevant?

20 A. Correct.

21 Q. You were asked a lot of questions about how you couldn't
22 specify numbers, you didn't know exactly this or that.

23 Mr. Smith, I want to bring you back to kind of where we
24 started on MEDIC 1495. You only looked for two types of
25 errors, right?

1 A. That's correct.

2 Q. And you didn't have the data underlying MEDIC 1495, right?

3 A. That's correct.

4 Q. And the reason you didn't have that data underlying
5 MEDIC 1495 is because the Government never produced it, right?

6 A. That would be my --

7 Q. As far as you know?

8 A. That would be my presumption.

9 Q. Never produced it in the criminal case, right, as far as
10 you know?

11 A. As far as I know.

12 Q. Never produced it in this case, as far as you know?

13 A. As far as I know.

14 Q. In fact, as far as you know, it's gone.

15 A. That's as far as I know, correct.

16 Q. Well, it's never been produced.

17 Now, if you had that data underlying MEDIC 1495 that the
18 Government never produced, then you could find the specific
19 numbers, right? Well, let me rephrase the question.

20 Limiting your analysis just to those two types of errors,
21 not every error, there's others and -- there's other errors --

22 **MR. PHELPS:** Objection, move to strike.

23 **THE COURT:** Overruled.

24 **BY MR. GREENBERG:**

25 Q. Well, Mr. Smith, we already covered how, when you analyzed

1 Ms. Hammond's analysis, you found a lot more billings, you
2 found a lot more errors, right?

3 A. Correct.

4 Q. And the inventory was the same that you analyzed there?

5 A. I was never asked to review the accuracy of the inventory.
6 So I don't know that.

7 Q. But as far as you know, MEDIC 1495 looked the same
8 inventory as Hammond, but just with fewer billings.

9 A. That's my understanding.

10 Q. Right.

11 So if you had the data underlying MEDIC 1495, you could do
12 what Government counsel accused you of failing today, which is
13 calculate the specific numbers if you correct for the failure
14 to count transfers and the inclusion of MADAP, right?

15 A. I would need the specific underlying data to calculate
16 those numbers, correct.

17 Q. Yeah. But just to be clear, if you had those underlying
18 data, which the Government, as far as you know, never produced,
19 then you could do that math, right?

20 A. I could do that analysis, yes.

21 Q. That's what I meant, the analysis, I'm sorry. I didn't
22 mean to . . .

23 So it's the absence of your -- the fact that you didn't
24 have the data underlined in 1495, that's what made you unable
25 to give the specific numbers you were just asked to provide,

1 right?

2 A. That's correct.

3 Q. Lidoderm is a mild painkiller, right?

4 A. It's my understanding, yes.

5 Q. Not an HIV drug?

6 A. Correct.

7 Q. Not a hepatitis C drug?

8 A. Correct.

9 Q. And it's not a cancer drug?

10 A. It's not a specific cancer treatment.

11 Q. Okay. Not known as a cancer drug, indicated for cancer
12 specifically?

13 A. Correct.

14 Q. Now, there was a big show during the questions you were
15 asked about Lidoderm, big focus on Government's Exhibit 98 for
16 Old Emmorton. Do you remember the documents with the really,
17 really small font?

18 A. Yes.

19 Q. And Government's Exhibit 37 for Plumtree.

20 A. Yes. I still have the Old Emmorton one. I don't have the
21 Plumtree one.

22 Q. And you remember Government counsel pulled out his
23 calculator and calculated, like, a 96,000-dollar loss based on
24 what he said was the price. And, you know, we don't dispute
25 the price is somewhere on there, right?

1 A. Correct.

2 Q. All right. Now, with the 96,000-dollar shortage, let's
3 talk about that.

4 Now, this is not a document that you've reviewed yet.
5 It's not a document that's in evidence yet. The Government
6 stipulated to authenticity.

7 MR. GREENBERG: And, Your Honor, I would like to show
8 it to Mr. Smith and ask him to provide an opinion on the spot
9 because it will illuminate the situation with Lidoderm and
10 Abilify SOL.

11 THE COURT: Any objection?

12 MR. PHELPS: I'm not clear what he wants to do.

13 THE COURT: Well, I was going to ask him a question --

14 MR. GREENBERG: This will facilitate that.

15 THE COURT: My law clerk slipped me a note. I was
16 going to ask a question about these two drugs when both parties
17 finished.

18 So let's go ahead and get it out now. Overrule the
19 objection.

20 MR. GREENBERG: This will clarify a lot. This will
21 clarify a lot.

22 THE COURT: Go ahead.

23 BY MR. GREENBERG:

24 Q. If you could, please, turn to Tab 85 in your binder with
25 no cover on it, sir.

1 **MR. PHELPS:** Your Honor, I object to the use of this
2 document. This isn't anything that anybody would have had at
3 the time of MEDIC 1495. It's not relevant to probable cause or
4 malice.

5 **MR. GREENBERG:** It is relevant, because it could have
6 been requested. The same breakdown was done quickly in 2014,
7 and it's something that both Lating and Mosley, as well as
8 Arnold, could have easily asked for. They saw the issue with
9 the transfers. They saw the issue -- they knew about this.

10 **THE COURT:** Well, I'll allow it on the idea that it
11 shows something they could have asked for. I'm not sure how
12 probative it is in the case on the ultimate issue, but I'll
13 overrule the objection for now.

14 **MR. GREENBERG:** All right.

15 **BY MR. GREENBERG:**

16 **Q.** Now, Mr. Smith, Plaintiff's Exhibit 85, would you please
17 read the title, the date at the top of the page, top right?

18 **A.** It says March 28th, 2014.

19 **Q.** Okay. And that's -- what's the title of the document on
20 the first page?

21 **A.** "MEDIC 1997 Pharmacare at Old Emmorton Invoice Review."

22 **Q.** And if you look at the date range of invoice review in the
23 middle of the page, what's the date range?

24 **A.** January 3rd, 2007, through January 19th, 2011.

25 **Q.** All right. This document is mostly tables. Sir, you have

1 analyzed billions of claims. I'm sure you can read this
2 quickly. I'll just give you a couple minutes to peruse the
3 document. But just to move this along, most of it is -- it's
4 all from the Old Emmorton store, and it's a breakdown by year,
5 okay.

6 And to maybe move this along further, actually, you don't
7 even have to look at the whole thing. Really, all you need to
8 look at, I think, is Pages 5 and 6.

9 **MR. GREENBERG:** Court's indulgence.

10 **THE WITNESS:** Okay.

11 **BY MR. GREENBERG:**

12 **Q.** All right. You see how on Page 5, what's the date range
13 of invoice review for the Old Emmorton store on Page 5?

14 **A.** January 1st, 2008, through December 31st, 2008.

15 **Q.** And in the "Top 10 Drug Shortages," what's number one for
16 2008?

17 **A.** Abilify.

18 **Q.** What kind of Abilify?

19 **A.** The solution, 1 milligram per milliliter.

20 **Q.** And if you then look on the next pages, what's the date
21 range of that review? Page 6 of MEDIC 1997.

22 **A.** January 1st, 2009, through December 31st, 2009.

23 **Q.** And what's the third drug down?

24 **A.** Abilify Solution, 1 milligram per milliliter.

25 **Q.** And what's the, quote, "shortage" there?

1 A. 4,200 units.

2 Q. All right. Let's go back to the Lating affidavit,
3 Plaintiff's Exhibit 70, at Page 9 of the document itself, in
4 Paragraph 15. Let's just highlight the part where it says
5 9,600 units short of the drug Abilify SOL
6 1 milligram/millimeter.

7 Now, I don't know if we can put the MEDIC 1997 side by
8 side. Plaintiff's Exhibit 85.

9 A. Entire 9,600 units were from 2008 and 2009.

10 Q. So everything, the quote, "shortage" in the Lating
11 affidavit for the 9,600, none of that is from after 2009?

12 A. That's what it appears from this document, yes.

13 MR. GREENBERG: Just so everybody can see. Let's go
14 to the other page and highlight "Abilify SOL." There we go.

15 BY MR. GREENBERG:

16 Q. And so, Mr. Smith, those two numbers that were just
17 highlighted add up to the entirety of the, quote, "shortage"
18 for Abilify SOL in the Lating affidavit, right?

19 A. Correct. It was 5,400 from 2008, plus 4,200 from 2009,
20 which is 9,600.

21 Q. Now, I don't think we need to get into those two
22 Government exhibits just yet.

23 I want to come back to where we were earlier, I believe,
24 before the lunch break, where you saw the Excel spreadsheet
25 that Jeremy Dykes, an Assistant Attorney General in the civil

1 part of the Maryland Office of Attorney General prepared, I
2 believe it's Plaintiff's Exhibit 42. Let's go back to that,
3 please.

4 Understanding that you hadn't seen this before today, but
5 you're an expert, and you can quickly process information,
6 right?

7 You see how in this email from Mr. Dykes, May 17th, 2013,
8 it says in the second paragraph, "I created this spreadsheet by
9 consolidating the Invoice Review 2 tab of each of the nine
10 Pharmicare locations, respective" -- basically he took -- to
11 cut to the chase, rather than reading the whole thing. He
12 counted all the transfers in MEDIC 1495 for all the drugs in
13 MEDIC 1495 and showed what those numbers were, right? We
14 talked about that?

15 A. That's correct.

16 Q. Let's look at the next page, the very first page of his
17 Excel file. You see how Abilify SOL has that same, quote,
18 "shortage" of 9,600 in the top right?

19 A. Yes, I see that.

20 Q. And you know now that all of that is from 2008, 2009, and
21 Old Emmorton, right?

22 A. That's correct.

23 Q. Let's read -- let's go through the other Abilify numbers
24 in here. Why don't you just -- actually -- well, is it fair to
25 say, rather than reading each number -- I think Judge Anderson

1 will get this pretty quickly.

2 But is it fair to say that there is a large surplus for
3 each other form of Abilify -- one, two, three, four, five --
4 six other forms of Abilify tab -- they're all tablets,
5 different doses, there are massive surpluses in column U there?

6 A. There are thousands of pill surpluses for each one of
7 those.

8 Q. Thank you, sir.

9 Let's go back to -- why don't we go back to Government's
10 Exhibit 98.

11 THE COURT: Go ahead.

12 BY MR. GREENBERG:

13 Q. Mr. Smith, you were asked on cross-examination about --
14 sorry, I misspoke.

15 Can we go, actually, to Plaintiff's Exhibit 70, the Lating
16 affidavit at Page 9, Paragraph 15, please.

17 You were asked some questions about four drugs here.
18 We've talked about one of them, Abilify SOL. And the other
19 three were Kaletra, Norvir capsules, and Lidoderm, right?

20 A. I don't remember any specific questions about Norvir.

21 Q. Okay. But you were asked questions about "Well, isn't it
22 true that transfers were accounted for these four drugs"; do
23 you remember that?

24 A. Yes.

25 Q. All right. Now, these numbers in Paragraph 15 of the

1 Lating affidavit, on Page 9 of the Lating affidavit, match the
2 numbers that count transfers in Plaintiff's Exhibit 42, the
3 May 17th, 2013, calculations by -- the math by Jeremy Dykes,
4 right? We've talked about that? I think.

5 A. At least for Abilify and Lidoderm, I remember confirming
6 those two numbers.

7 Q. Okay. All right. I believe you were asked about Kaletra.
8 Actually, rather than -- all right. Let's go back to
9 Plaintiff's -- you know what, let's just do it this way.

10 Counting transfers for these four drugs wouldn't address
11 the -- would it or would it not address the issue for the risk
12 of MADAP duplicates only to count transfers for Kaletra and
13 Norvir and not to eliminate the MADAP plans?

14 A. For Kaletra and Norvir, which are HIV medications, it
15 would not account for the double-counting with MADAP.

16 Q. And we've talked about how the Norvir capsules and tablets
17 are interchangeable, right?

18 MR. PHELPS: I don't remember that, but --

19 MR. GREENBERG: It came out in his direct.

20 BY MR. GREENBERG:

21 Q. Let me just rephrase the question, since it did come out
22 already.

23 In -- you know, maybe we do need to show Plaintiff's
24 Exhibit 42 just to connect all of the dots here.

25 MR. GREENBERG: Sorry, Your Honor, unless -- yeah, I

1 just want to make sure this is clear for the record.

2 **BY MR. GREENBERG:**

3 **Q.** In Plaintiff's Exhibit 42, and I believe you were asked
4 about this on cross, but I just want to go through it quickly,
5 it'll take a minute, probably.

6 Do you see how -- and I apologize if I'm misremembering.

7 You see how on Page 2 of this -- in this Excel file, you
8 see how it says row 220, Kaletra tab, 200, 50-milligram total.
9 And the number on the far right, what's that? On column U.

10 **A.** 27,818.

11 **Q.** And to what extent, if any, does that match the number in
12 Paragraph 15 on Page 9 of the Lating affidavit?

13 **A.** I think it's the same number, but I'd want to
14 double-check.

15 **Q.** Sure.

16 **A.** Are you able to put them side by side.

17 **Q.** It's also in your binder, by the way, the one without a
18 cover. In fact, that might be easier rather than flipping back
19 and forth to the Lating affidavit, you can just look at it in
20 your binder. Or we can flip back and forth, either way. You
21 know what, it probably is best for Judge Anderson to do it this
22 way.

23 **MR. GREENBERG:** Plaintiff's Exhibit 70. Page 9,
24 Paragraph 15, Kaletra. Why don't you just highlight Kaletra
25 and Norvir, including the purported shortages.

1 Oh, okay. Great.

2 **BY MR. GREENBERG:**

3 **Q.** So do you see in the document on the right for May 17th,
4 2013, Plaintiff's Exhibit 42, there's a purported shortage for
5 Kaletra when transfers are counted of 27,818 units?

6 **A.** That's correct.

7 **MR. GREENBERG:** And then if we maybe reduce the size
8 of Plaintiff's Exhibit 70 so we can see the number of units of
9 Kaletra. This one -- so we can see -- no, no, reduce the size
10 so we can see the previous sentence where it says number of
11 units.

12 Let's highlight "Pharmacare was collectively short 27818."

13 "Units of the drug Kaletra," let's highlight that.

14 **BY MR. GREENBERG:**

15 **Q.** That matches exactly the number that -- when transfers are
16 counted, right?

17 **A.** Correct.

18 **Q.** And that is before the adjustment when you remove the
19 MADAP claims for Kaletra, right?

20 **A.** That's correct.

21 **Q.** And when you remove the MADAP claims for Kaletra, you get
22 a significant surplus, right?

23 **A.** You get a surplus, yes.

24 **Q.** Yes.

25 Okay. And let's just do quickly the same thing for

1 Norvir. Let's start here. It says 12,033 units short of the
2 drug --

3 **MR. GREENBERG:** You know what, Judge Anderson, I think
4 you get the point here, right?

5 **THE COURT:** All right. I've got the point.

6 **MR. GREENBERG:** Yeah, I mean, basically the
7 number . . .

8 **BY MR. GREENBERG:**

9 **Q.** So the numbers that you were asked about at length on
10 cross, in Paragraph 15, with respect to the HIV drugs, Kaletra
11 and Norvir, those are not accurate numbers -- or to what
12 extent, if any, are those inaccurate because they include the
13 MADAP claims with that risk of duplication that Lori Cannata
14 testified would have caused her and MEDIC to eliminate the
15 entire dataset if they had known about it in the spring of
16 2013?

17 **MR. PHELPS:** Objection to the form of the question.

18 **THE COURT:** It's a very compound question.

19 **MR. GREENBERG:** I'll rephrase it.

20 **THE COURT:** I think you need to break it up.

21 **MR. GREENBERG:** It was too long a question. I
22 apologize.

23 **BY MR. GREENBERG:**

24 **Q.** Mr. Smith, these numbers in Paragraph 15 of the Lating
25 affidavit on Page 9, we've established they count transfers,

1 right?

2 A. That's correct.

3 Q. And we've established that they don't -- they don't remove
4 MADAP claims, right?

5 A. That's correct.

6 Q. So to the extent that the risk of duplicate errors,
7 because we've established -- or Lori Cannata's testimony
8 establishes and MEDIC 1884 establishes that a risk of duplicate
9 claim errors would lead MEDIC to remove an entire dataset,
10 those numbers in Paragraph 15 are not accurate, correct?

11 A. That's correct.

12 Q. All right. Let me just see if I have anything else here.

13 Oh, actually, yeah. We didn't cover Lidoderm. Let's do
14 Lidoderm.

15 So you were asked about this, I guess, large supposed
16 shortage 12,913 [sic] units of Lidoderm, right? In
17 Paragraph 15 of the Lating affidavit.

18 A. It's 12,939.

19 Q. I might have misspoken on the number, I'm sorry.

20 And the 12,939, let's keep that number in mind. Let's go
21 back to Plaintiff's Exhibit the 85, MEDIC 1997. Maybe we
22 should do the side-by-side thing again, actually. Sorry.

23 (Discussion held off the record.)

24 **BY MR. GREENBERG:**

25 Q. All right. So this is for -- what year is this?

1 Mr. Smith, did you catch what year this is for? What years,
2 that is.

3 A. The same 2008 and 2009.

4 Q. Okay. Without getting into where they are on each table,
5 what is the number for Lidoderm, the first one is 2008, what's
6 that supposed shortage for Lidoderm there?

7 A. 4,260.

8 Q. And that's 2008.

9 Then what's the supposed shortage for Lidoderm in 2009?

10 A. 8,700.

11 Q. And if you add those two numbers together, what do you
12 get?

13 A. 12,960.

14 Q. 12,960, wow.

15 And let's go back, quickly, to Paragraph 15 on Page 9 of
16 the Lating affidavit.

17 So those supposed shortages for 2008 and 2009 wipe out the
18 entire shortage in Paragraph 15 for Lidoderm for the Lating
19 affidavit, right?

20 A. Yes.

21 Q. Now, you were asked questions about the dollar numbers.
22 Rather than spend more time with a calculator and looking at
23 the numbers, it's obvious that if there's no shortage in real
24 life, just by correcting the obvious errors for not looking at
25 what years these things -- these numbers are from, it's obvious

1 that the dollar loss would go away, too, right?

2 **MR. PHELPS:** Objection. It's leading.

3 **THE COURT:** It is leading. See if you can rephrase
4 it.

5 **MR. GREENBERG:** It is. I'm just trying to move this
6 along. Yes, Your Honor, I will.

7 **BY MR. GREENBERG:**

8 **Q.** All right. So you were asked on cross and said that in
9 the shortages for Lidoderm on Government Exhibits 98 and 37, 98
10 being Old Emmorton for MEDIC 1495, 37 being Plumtree from MEDIC
11 1495, you were asked questions about those shortages being
12 multiplied by dollar amount; do you remember that?

13 **A.** Yes, I do.

14 **Q.** And Government counsel put on a calculator, and it was,
15 like, 96,000 and something?

16 **A.** Yes.

17 **Q.** What is your expert opinion on the effect, if any, on that
18 96,000-dollar plus, quote, "loss" if you eliminate shortages
19 from before 2010?

20 **A.** If there is no shortage, then there would be no loss.

21 **Q.** Okay.

22 **MR. GREENBERG:** Court's indulgence, I just want to
23 confer briefly.

24 **THE COURT:** All right.

25 (Counsel conferring.)

1 **MR. GREENBERG:** Nothing further for the witness.

2 **MR. PHELPS:** Can I have one question, Your Honor, on
3 the recross?

4 **THE COURT:** All right. I'll allow one question.

5 - - -

6 **CROSS-EXAMINATION**

7 - - -

8 **MR. GREENBERG:** Sorry to interrupt. I did mean to
9 move in Plaintiff's Exhibit 85 into evidence. I don't think
10 there's any dispute. It came from MEDIC. They opened the door
11 to it; it's relevant.

12 **THE COURT:** Any objection?

13 **MR. PHELPS:** We did note our objection previously,
14 Your Honor, yes.

15 **THE COURT:** All right. I'm going to admit it.

16 Overruled.

17 All right. Go ahead.

18 **BY MR. PHELPS:**

19 **Q.** Mr. Smith, I'm going to back to Plaintiff's -- or excuse
20 me, Defense Exhibit 98. What's the date range for the entire
21 review of Old Emmorton?

22 **A.** January 3rd, 2007, to January 6, 2012.

23 **Q.** And did Old Emmorton have both shortages and surplus of
24 drugs?

25 **MR. GREENBERG:** Your Honor, he said one question.

1 **MR. PHELPS:** It'll be done in a minute.

2 **THE COURT:** All right. Go ahead.

3 **THE WITNESS:** You're asking just generally across all
4 1495 --

5 **BY MR. PHELPS:**

6 **Q.** Generally, across all drugs, yep.

7 **A.** There are positive and negative numbers on 1495.

8 **Q.** And if the date range begins in 2007, every one of the
9 shortages and surpluses for every one of the drugs is going to
10 have data from 2008 and 2009, right?

11 **MR. GREENBERG:** Objection. Calls for speculation.
12 There's no way he could know that.

13 **THE COURT:** Well, if he knows.

14 **THE WITNESS:** I don't know.

15 **MR. PHELPS:** Okay.

16 That's it. Thank you.

17 Your Honor, I would like to move Plaintiff's Exhibit 98
18 into evidence.

19 **MR. GREENBERG:** Plaintiff's Exhibit 98?

20 **MR. PHELPS:** Defense Exhibit 98.

21 **THE COURT:** What is the document?

22 **MR. EISER:** It's the Old Emmorton Invoice Review 3.

23 **MR. GREENBERG:** Yeah, we have no objection. In fact,
24 that was something that Mr. Smith reviewed to form his opinion.

25 **THE COURT:** All right. Admitted without objection.

1 Anything further of this witness?

2 **MR. PHELPS:** No, Your Honor.

3 **THE COURT:** Thank you, sir. You're excused.

4 (Witness exits.)

5 **THE COURT:** All right. Before we call the next
6 witness, let me -- can we get a roadmap of what we have to go
7 after this?

8 Looking at the Plaintiff's will-call list, it looks like
9 the only witnesses remaining, once we set aside Wilkinson and
10 Pascale, the only ones left are Cannata and Pam Arnold.
11 There's some more on the may-call list. Is anybody going to be
12 pulled off that list, during this week?

13 **MR. GREENBERG:** Not this week, Your Honor. It would
14 only be, I think, in rebuttal. Now, we believe we can
15 finish -- assuming my -- actually, let just me confirm with the
16 time estimate. I know where Your Honor is going.

17 **THE COURT:** I'm not trying to rush. My law clerk and
18 I got to rebook our plane flights, so I just want to get an
19 idea. I'm not going to hold anybody to it. But apparently
20 just two more witnesses to go?

21 **MR. GREENBERG:** Your Honor, if I heard my colleague
22 correctly, it's one hour and 11 minutes for Cannata's
23 depositions designation with both sides' combined. We do need
24 to fix time allocations.

25 And then there's Pam Arnold, and I'm not entirely sure how

1 long that's going to be.

2 **THE COURT:** But if she goes up tomorrow morning, can
3 we finish her tomorrow?

4 **MR. GREENBERG:** Well, actually, I mean, if we start
5 her today, I think there's a chance we might be able to finish
6 her today.

7 **THE COURT:** All right. Very good.

8 As far as the deposition, we have a chess clock with
9 plunges going both way. Can't the law clerk and the courtroom
10 deputy just hit the plunger back and forth when we see on the
11 screen who is taking the witness?

12 **MR. GREENBERG:** Respectfully, Your Honor, these
13 reports that Brian Fronzaglia, the superstar, has created.
14 They actually have the time on them for each set of clips. And
15 you don't need to hit the clocks, if there's a way to adjust
16 the clocks to add time.

17 **THE COURT:** Well, we'd just have to write it down and
18 do the math. I'd rather run the clock. My law clerk says we
19 can add the time.

20 **MR. GREENBERG:** Okay. That would be, I think, a lot
21 easier for both of you.

22 **THE COURT:** Also, the deposition we already heard
23 about, Ms. Rapoza, we didn't break out the time to both sides.
24 I think somebody needs to go do the math and look at the
25 transcript so we can make that adjustment also.

1 **MR. GREENBERG:** So Plaintiff's Exhibit 141 that we
2 submitted has the video clip report, it has that breakdown, to
3 take away the time that was incorrectly charged to us that
4 should have been charged to them.

5 **THE COURT:** It's on that document?

6 **MR. GREENBERG:** Plaintiff's Exhibit 141, yes, sir.

7 **THE COURT:** I think you-all going to have to do the
8 breakdown for us.

9 (Discussion held off the record.)

10 **THE COURT:** Just have it some time before we adjourn,
11 have me those figures.

12 **MR. GREENBERG:** We'll sort that out.

13 So why don't we go ahead and do the -- let's go ahead and
14 do the *de bene esse* deposition of Lori Cannata.

15 **THE COURT:** That's how long?

16 **MR. GREENBERG:** I believe it's an hour and 11 minutes.

17 **MR. PHELPS:** There's a lot of objections in it.

18 **THE COURT:** We're going to hit a necessity for an
19 afternoon break at some time. Let's go ahead and take the
20 break now.

21 Let me just say, I'm going to call Judge Bredar during
22 this break. He's looking for a phone call from me. And I'm
23 going to tell him what we decided to do. And I'm going to tell
24 him we're coming back up here August 7th and August 14th to
25 finish his trial. And that's based on his representation that

1 the other case is going to go forward. And I just say that
2 because if anybody in the other case has a hiccup and has to
3 get bumped back a week or two, there's going to be a major
4 problem, and it's not going to be my problem. Okay?

5 Let's take a 15-minute recess.

6 **THE CLERK:** All rise. This Honorable Court is now in
7 recess.

8 (Whereupon, a recess was taken from 2:56 p.m. to 3:12
9 p.m.)

10 **THE CLERK:** All rise. This Honorable Court resumes in
11 session.

12 **MR. GREENBERG:** Your Honor, before we proceed, there
13 is a related matter that we wanted to bring to Your Honor's
14 attention, if we may have the Court's permission. It's an
15 important matter. It really kind of goes to the heart of what
16 we've been talking about, Friday, today, over the weekend.

17 We're ready to finish this trial by June 16th or, at the
18 latest, Saturday, June 17th. We are ready to be in court on
19 June 10th and 11th, Saturday and Sunday, to get this done.
20 Mr. Annappareddy has been waiting for justice for nearly
21 10 years. He is missing work right now. He is losing money by
22 being here. He would have to make another round of flights in
23 August if we came back, with that huge gap. And we have, you
24 know, witnesses who may be on vacation then. We don't know.

25 This case has been pending for over four years, as Your

1 Honor has repeatedly emphasized. It is fundamentally unfair,
2 in our view, to have a, roughly, two-month pause where the only
3 reason, the only reason, as far as I can tell that's been
4 articulated, is that lead counsel for Government counsel has
5 some trial in a recent case --

6 **THE COURT:** Judge Bredar confirmed it is a major
7 trial, news media has been all over it, it involves alleged
8 fraud during the COVID money handout, and it's been set for
9 quite some time. And --

10 **THE WITNESS:** Your Honor, on that note, as Your Honor
11 astutely and correctly pointed out before the recess, there's
12 no reason why another counsel can't fill in for Mr. Phelps in
13 this case, as in the other cases.

14 Mr. Flowers has a trial in August that cannot be moved,
15 that's long been on the calendar. There's no reason why
16 Mr. Phelps's conflict with the trial should be prioritized over
17 Mr. Flowers', especially when Mr. Annappareddy is the one who's
18 traveled from Washington state. We've got witnesses.

19 And also, this would waist judicial resources, to have
20 this huge two-month break. You know, I appreciate that there's
21 a major trial in another case. But we're here now. We can get
22 this done now --

23 **THE COURT:** I don't see how we can if you insist on
24 waiting until after Wilkinson and Pascale go up to put up
25 Mr. Annappareddy. We can't work Saturday and Sunday and still

1 finish it. And GSA tells we cannot work Saturday and Sunday.
2 I'm willing to do it, but I'm told it's not allowed.

3 **MR. GREENBERG:** Your Honor, okay, let me --

4 **THE COURT:** Even if we could work Saturday and Sunday,
5 I don't see how we could finish it if we have to take a three-
6 or four-, five-day hiatus and start Wednesday and Thursday of
7 next week and try to finish over that weekend. I don't think
8 it's doable.

9 **MR. GREENBERG:** Well, a couple of points, Your Honor.
10 One is, we see no reason why Wilkinson and Pascale can't both
11 go on the 14th, and Mr. Annappareddy testify starting that day
12 after them.

13 And we also see no reason why, if necessary, the closing
14 can't be done by Zoom. That would address some issues. And I
15 think that's agreed to already by counsel for the Government.

16 And then, you know, I know Your Honor said most recently
17 after -- before last recess, no more witnesses out of order.
18 But if we have witnesses out of order, the three that the
19 Government has queued up, I think, that could be ready today or
20 tomorrow, that's going to solve a lot of our problems --

21 **THE COURT:** I'm sorry, I didn't understand what you
22 just said. Say that again.

23 **MR. GREENBERG:** I apologize. I was talking too fast,
24 Judge Anderson.

25 They have only three witnesses in their case in chief

1 other than Wilkinson and Pascale. We actually think we can
2 probably do Pascale and Wilkinson each between an hour and
3 two hours, okay. And in the same day, get Mr. Annappareddy on
4 the stand and started. That would be the 14th.

5 And then we've got the 15th and the 16th. I mean, if Your
6 Honor would allow us -- we're going to brief the issue of
7 rebuttal. Because we have -- obviously, we understand Your
8 Honor's position, I think we have a respectful disagreement.
9 But if we're allowed to call witnesses out of order, and they
10 are as well, we can fill up this time, get it done, perhaps
11 with the exception of the closing, by June 16th.

12 **MR. MILLER:** Isn't that what we recommended in the
13 email and they said they objected to?

14 **THE COURT:** I thought that's basically what we
15 recommended.

16 **MR. GREENBERG:** It's actually different, respectfully.
17 And the difference is that the email was saying
18 Mr. Annappareddy would have to start testifying on or before
19 Wednesday of this week; whereas what we're proposing, and what
20 we have always proposed, is that he be our last witness, have
21 the opportunity to respond to DiPietro, Dykes [sic], and Ryan,
22 as well as the prosecutors.

23 **THE COURT:** Well, I said earlier, in a nonjury trial,
24 I don't see a problem with chopping up the case and calling the
25 witnesses out of order because I can compartmentalize the

1 testimony, much harder for a jury to do that. So I have no
2 problem, but I thought your side was the one strongly opposed
3 to calling witnesses out of turn and out of order and mixing
4 and matching.

5 But if you're willing to do that now, I'm certainly
6 willing to go forward.

7 **MR. GREENBERG:** I apologize if we miscommunicated
8 that. Our concern was that Mr. Annappareddy be our last
9 witness in our case in chief. That was our concern, that he
10 not have to then be limited to only responding to Wilkinson and
11 Pascale, not being able to respond to Ryan and DiPietro and
12 Dyke, Judge Anderson. And we think the most efficient thing is
13 to proceed, call the witnesses out of order. You know, there
14 might be some slight gaps, but we can get this done.

15 **THE COURT:** All right. I just told my law clerk over
16 the break, over lunch, the one thing I don't want is for this
17 case to go up on appeal, which I'm sure it will with whoever
18 wins, whoever loses, going up to the Fourth Circuit, I don't
19 want anybody to suggest that this Court was unfair in the
20 scheduling of the trial. Because I'm here. I'm available all
21 summer long. I was available in April. I'm here this summer.
22 Just let me know, and I'll be here.

23 So I want a clear statement on the record that the
24 Plaintiff is satisfied with this proposal that you just stated.

25 **MR. GREENBERG:** Do you want to hear it from --

1 **THE COURT:** Mr. Annappareddy, is that satisfactory to
2 you, what your counsel just told me?

3 **MR. ANNAPPAREDDY:** I am satisfactory [sic] as long as
4 you give me the opportunity for rebuttal. Thank you, Your
5 Honor.

6 **THE COURT:** All right. Very good.
7 Is the Government prepared to go forward?

8 **MS. FARBER:** Yes, Your Honor, we are. I would just
9 like to say, in case it's been somewhat contentious, it is a
10 pleasure to be on the same page with Plaintiff on trying to get
11 this done on time.

12 I do want to note that the Government will be calling
13 Craig Blomquist, so we do have one additional witness. We
14 don't anticipate that affecting the schedule in any way. It'll
15 be about half an hour.

16 **THE COURT:** All right. So when are we going to get
17 Wilkinson and Pascale in here?

18 **MR. GREENBERG:** Well, what we would propose is that
19 they be both on the 14th. I think that's doable. They'll both
20 be back from vacation.

21 **THE COURT:** Both on the 14th?

22 **MR. GREENBERG:** I believe so. I mean, you know, it's
23 a little hard to keep track of. But, you know, we've all been
24 bending over backwards for, basically, them. And I think, you
25 know, if -- they're going to be in the country, so yeah.

1 We also do have -- I think, we have our pharmacy expert,
2 but he'll be in rebuttal. And two more rebuttal witnesses.
3 Again, we're going to brief that issue so Your Honor will make
4 a ruling. And if Your Honor hears the testimony, you can
5 disregard it.

6 **THE COURT:** All right.

7 Yes, sir.

8 **MR. EISER:** Your Honor, I don't believe there's such a
9 thing as rebuttal expert testimony.

10 **THE COURT:** We'll just have to wait until that time
11 comes, and we'll see.

12 Now, Mr. Phelps, what about the two witnesses who are in
13 Europe, when can they be here?

14 **MR. PHELPS:** So, Your Honor, Ms. Pascale lands at
15 midnight on the 13th.

16 **THE COURT:** Right. Lands where?

17 **MR. PHELPS:** I believe she lands at Dulles, Your
18 Honor, Airport. It's probably about an hour and a half from
19 here.

20 **THE COURT:** I know where it is.

21 **MR. PHELPS:** And she may need to get through customs.
22 I don't know if it's direct from overseas or not.

23 All that is to say, the 14th would be difficult for her.
24 If you ordered her to be here, we would obviously convey that.

25 Ms. Wilkinson is available to testify as early as the

12th, but it doesn't really make sense to do, like, one witness on Monday and then take Tuesday and Wednesday off.

THE COURT: What about bring her on the 13th, and then putting her up on the 13th and trying to get Ms. Wilkinson here first part of the afternoon on the 14th?

MR. PHELPS: Ms. Pascale, you mean?

THE COURT: I'm sorry, Ms. Pascale, I should say.

MR. PHELPS: I mean, Your Honor, I'll do my best. I hope I can communicate to her. I don't know what her phone situation is. I haven't talked to her since she's been overseas, but I will convey that.

THE COURT: That's fine. I appreciate you trying to do that. And you can tell them your side accepted subpoenas on behalf of both of them, and they're over there technically under subpoena. So we'll work with them all we can.

MR. GREENBERG: Your Honor, with respect to our pharmacy expert, in light of Government counsel's comment about there's no such thing about an expert witness in rebuttal, I think we can short circuit and not even get into it by just simply calling our pharmacy expert in our case in chief.

THE COURT: That's fine.

Hold on one second.

Let's go for today, and we'll try to get my law clerk to put in writing what's been agreed to today. Because, as I said, I do not want this to be an issue on appeal. I don't

1 want the order and procedure of calling witnesses to be a
2 technical issue that's attributed to me, because it's not my
3 problem. And I'm trying to do everything I can to work around
4 it.

5 **MR. GREENBERG:** So, Judge Anderson, we know that you
6 and your staff have been working very hard on this, and we're
7 very grateful for that.

8 One small point -- but not a small point, it's an
9 important point, and it might also avoid a potential appellate
10 issue -- is to allow us leave to call the two witnesses that we
11 were calling rebuttal witnesses, you haven't yet heard from, in
12 our case in chief. One of them is someone that the Government
13 has been well aware of since at least February 2014. It won't
14 be any surprise.

15 The other person, I don't know, but he'll be, I think,
16 almost entirely -- almost entirely a character witness. And
17 that way, the issue of rebuttal -- I still think it might have
18 to be briefed for the Patels, but it won't have to be briefed
19 as extensively.

20 **THE COURT:** All right. Let's go ahead with the next
21 deposition.

22 **MR. GREENBERG:** So Mr. Annappareddy and the Government
23 call Lori Cannata.

24 **THE COURT:** Let's get counsel to put on the record the
25 times --

1 **MR. GREENBERG:** Oh, I'm sorry. I meant to say. My
2 apologies.

3 Plaintiff's Exhibit 141 has the time breakdown for
4 Melissa Rapoza. The Plaintiff designations took up 31 minutes
5 and 5 seconds. And the Defendant's designations took up
6 10 minutes and 19 seconds. So that 10 minutes and 19 seconds
7 should be transferred from our time to theirs.

8 **THE COURT:** The Government agree with those figures?

9 **MR. PHELPS:** Yes, Your Honor.

10 **THE COURT:** Very good.

11 All right. Let's move forward.

12 (Video playing.)

13 **MR. GREENBERG:** Objection to the form, lack of
14 foundation.

15 I'm going to withdraw that objection.

16 **THE COURT:** Go ahead.

17 (Video playing.)

18 **MR. GREENBERG:** Withdraw that objection.

19 **THE COURT:** All right. Withdrawn.

20 (Video playing.)

21 **MR. GREENBERG:** Withdrawn. We can move on.

22 (Video playing.)

23 **MR. GREENBERG:** Withdraw the objection.

24 (Video playing.)

25 **MR. GREENBERG:** Objection. Hypothetical question.

1 This violates Rule 602.

2 **THE COURT:** That objection is overruled.

3 (Video playing.)

4 **MR. GREENBERG:** The same objection.

5 **THE COURT:** Overruled.

6 **MR. GREENBERG:** Objection, move to strike the last
7 answer. This witness has not been designated as an expert and
8 can't offer that kind of opinion.

9 (Video playing.)

10 **THE COURT:** I would overrule that objection, as well.

11 (Video playing.)

12 **MR. GREENBERG:** Objection, lack of foundation.

13 I'll withdraw that.

14 **THE COURT:** All right. Withdrawn.

15 (Video playing.)

16 **MR. GREENBERG:** I'll withdraw that.

17 **THE COURT:** Withdrawn.

18 Overruled.

19 (Video playing.)

20 **MR. GREENBERG:** Withdrawn.

21 **THE COURT:** Withdrawn.

22 (Video playing.)

23 **MR. PHELPS:** Can we pause it.

24 Your Honor, this was identified as Joint Exhibit 5 at the
25 time, and that was when we had a joint exhibit list. And I

1 just wanted to, for the record, clarify the current name of the
2 exhibit that the witness is presently talking about.

3 **THE COURT:** All right. What is the new number?

4 **THE WITNESS:** I think I can tell you real quick.
5 That's a very good point. Thank you, Mr. Phelps.
6 It's -- I believe it's Plaintiff's Exhibit 40. Yeah.
7 The cover letter?

8 **MR. PHELPS:** Yes.

9 **MR. GREENBERG:** Yeah, Plaintiff's Exhibit 40,
10 ECF No. 254-19.

11 **THE COURT:** It's already in evidence; is that correct?

12 **MR. GREENBERG:** Yes.

13 **MR. PHELPS:** Yes.

14 **THE COURT:** All right. You may proceed.

15 (Video playing.)

16 **THE COURT:** Overruled.

17 (Video playing.)

18 **THE COURT:** Overruled.

19 (Video playing.)

20 **MR. GREENBERG:** I'll withdraw that in light of later
21 testimony she gave.

22 **THE COURT:** You withdraw and what?

23 **MR. GREENBERG:** I'll withdraw it. Because she later
24 testified she read the letter.

25 **THE COURT:** All right.

1 Withdrawn.

2 (Video playing.)

3 **THE COURT:** I have to assume that's withdrawn?

4 **MR. GREENBERG:** We can withdraw that one, yeah.

5 (Video playing.)

6 **THE COURT:** What about that?

7 **MR. PHELPS:** Your Honor, I asked her how she drafts
8 this fulfillment letter, and that was the answer she gave. You
9 know, this discussion about the impact analysis, this is an
10 important discussion for the case, and she's talking about how
11 these letters are prepared, and so I think it's relevant.

12 **THE COURT:** I'll have to overrule the objection. I
13 think it's a proper question.

14 **MR. GREENBERG:** If I can make a brief statement, just
15 quickly.

16 So one issue that came up during this part of
17 Ms. Cannata's deposition is that, you know, she was kind of
18 talking about her knowledge today, and it wasn't clear whether
19 she was distinguishing that from what she knew back as sort of
20 a novice in the spring of 2013. That was the issue.

21 **THE COURT:** All right. I would overrule the
22 objection.

23 Please continue.

24 (Video playing.)

25 **THE COURT:** Overruled.

1 (Video playing.)

2 **THE COURT:** Go ahead.

3 (Video playing.)

4 **THE COURT:** All right. Hold it.

5 We never did get a time frame. I thought we were going to
6 get one.

7 Do you persist in the objection?

8 **MR. GREENBERG:** Yes, Your Honor.

9 **THE COURT:** All right. What about that? There is no
10 time frame, as far as I can tell.

11 **MR. PHELPS:** Your Honor, I think that it's helpful to
12 point out that the dollar loss figures that were provided in
13 this case was not some unique task that MEDIC was asked to do
14 in this and this case only. I think this is intended to
15 demonstrate that what was done in MEDIC 1495 is relatively
16 normal.

17 **THE COURT:** In that light, I'll allow it for what it's
18 worth.

19 Overruled.

20 (Video playing.)

21 **THE COURT:** All right. Let's hear argument on that.

22 **MR. PHELPS:** Yes, Your Honor.

23 So the framework of it is there's the cover letter that
24 says this does not -- this does not represent the impact to the
25 government. And Mr. DeGroff, the most senior member of the

1 team, is now authoring an email that has dollar value
2 shortages, and he's specifically suggesting to use it for the
3 search warrant. And if -- if it is true that what MEDIC's
4 doing can't be used because it's not the impact to the
5 government, then Mr. DeGroff is doing something wrong here.

6 And I don't think it's inappropriate to ask Ms. Gillin if
7 she thought her colleague was doing something wrong in light of
8 the language in the letter that she prepared that says this
9 does not represent the impact to the government.

10 **MR. GREENBERG:** Well, first of all, that is not what
11 Mr. DeGroff did. He did not suggest this be used for the
12 search warrant. That came from Robert Mosley. The email from
13 DeGroff that was shown earlier, I think, even to Mosley, all it
14 says is that DeGroff knew the numbers were being used for the
15 search warrant, not that he suggested it. That was Mosley.

16 But moving past that, the issue here is that what Lori
17 Gillin was as of spring of 2013, as you'll see later in the
18 testimony, is that she was basically a newbie, she was very new
19 to the process. She had never worked directly with law
20 enforcement before. She didn't have the level of expertise to
21 know whether it was appropriate or not. And they were asking
22 her questions based on what she knows today, when she is now,
23 what, almost 10 years later, a subject matter expert, a very
24 different position at MEDIC.

25 So the lack of a time frame, the fact that she's not an

1 expert, designated or otherwise, it's very problematic. She is
2 not able to opine on this matter.

3 **MR. PHELPS:** Your Honor, I think the question is
4 appropriate, and I don't think the Plaintiff can have it both
5 ways. Ms. Gillin testified that she prepared the letter and
6 that the letter says this analysis doesn't represent the impact
7 to the government. And now, Mr. Greenberg is saying, "Well,
8 she didn't know anything at the time because she was new and
9 young."

10 **MR. GREENBERG:** Ms. Cannata also testified she just
11 used a boilerplate template. Or she didn't say boiler. She
12 just said she used a standard form letter template. That
13 doesn't require any expertise. And to know whether it was
14 appropriate or not, does. I mean, that's just not something
15 she could possibly be qualified on.

16 **THE COURT:** Can we back it up and play the original
17 question again.

18 (Video playing.)

19 **THE COURT:** What did this email say? I can't see it.

20 **MR. PHELPS:** Your Honor, he's providing, essentially,
21 very preliminary figures from the MEDIC 1495 analysis,
22 something short of the dozen or so spreadsheets. And he just
23 puts one line for each pharmacy, and he has shortages, and then
24 he makes the comment, "Hope these are good for the time being,
25 I know you're drafting a search warrant."

1 **THE COURT:** Well, it might just be lay opinion. I'm
2 going to let it in for what it's worth, and allow the Plaintiff
3 ample to time to debate that, and I'll review it later. So
4 I'll accept it for what it's worth.

5 Go ahead.

6 Overruled.

7 (Video playing.)

8 **THE COURT:** I would overrule the objection.

9 Go ahead.

10 (Video playing.)

11 **THE COURT:** Overruled.

12 (Video playing.)

13 **THE COURT:** Overruled.

14 (Video playing.)

15 **MR. PHELPS:** Withdrawn.

16 (Video playing.)

17 **MR. PHELPS:** Withdrawn.

18 (Video playing.)

19 **THE COURT:** Overruled.

20 (Video playing.)

21 **THE COURT:** Overruled.

22 (Video playing.)

23 **MR. PHELPS:** I'll withdraw it.

24 **THE COURT:** I would overrule the objection.

25 **MR. PHELPS:** Withdrawn.

1 (Video playing.)

2 **MR. PHELPS:** Withdrawn.

3 (Video playing.)

4 **THE COURT:** It has been asked and answered. I would
5 sustain that objection. That's been asked and answered.

6 Go ahead.

7 (Video playing.)

8 **MR. PHELPS:** I'll withdraw it.

9 (Video playing.)

10 **MR. PHELPS:** I'll withdraw it.

11 (Video playing.)

12 **MR. PHELPS:** Withdrawn.

13 (Video playing.)

14 **MR. PHELPS:** Withdrawn.

15 (Video playing.)

16 **MR. PHELPS:** Withdrawn.

17 (Video playing.)

18 **MR. PHELPS:** Withdrawn.

19 (Video playing.)

20 **MR. PHELPS:** Your Honor, that didn't go beyond the
21 scope of anything that I've asked.

22 **THE COURT:** Overruled.

23 (Video playing.)

24 **MR. PHELPS:** I'll withdraw all of the objections on
25 this line of questioning.

1 **THE COURT:** All right. Withdrawn.

2 (Video playing.)

3 **THE COURT:** On what basis?

4 **MR. PHELPS:** Your Honor, I started objecting to all of
5 these questions when they started asking about clearance work
6 with the other entities. And you overruled the first one, so
7 then the rest of them --

8 **THE COURT:** All right. Same ruling all the way down.

9 (Video playing.)

10 **MR. PHELPS:** I'll withdraw that. She answered.

11 (Video playing.)

12 **MR. PHELPS:** That was not me. That was Mr. Major
13 or -- but I won't make the objection.

14 **THE COURT:** Withdrawn.

15 Proceed.

16 How much longer do we have to go to play on this?

17 **MR. FRONZAGLIA:** 30 seconds.

18 **THE COURT:** All right. Go ahead.

19 (Video playing.)

20 **THE COURT:** Can we get the time allocations for this
21 deposition we just saw? Maybe after the break. You can give
22 it to me after the break.

23 **MR. GREENBERG:** He's got it now, actually.

24 **THE COURT:** All right. Go ahead.

25 **MR. GREENBERG:** Our designations are 22 minutes and

1 58 seconds.

2 Government's direct designations were 30 minutes,
3 29 seconds -- 30 minutes and 39 seconds.

4 **THE COURT:** All right. Very good.

5 **MR. GREENBERG:** The Government's counter-designations
6 were 17 minutes and 51 seconds.

7 **MR. FRONZAGLIA:** Government agrees?

8 **MR. PHELPS:** He's been excellent thus far, so I'm just
9 going to go with it.

10 **THE COURT:** The technical assistance in this case has
11 been outstanding. I've been impressed with out quickly things
12 go up.

13 All right. Let's take a -- can we get another witness up
14 today?

15 Let's take a short recess first.

16 Who will be next?

17 **MR. GREENBERG:** How long would Your Honor like to go
18 today?

19 **THE COURT:** Until about 5:30.

20 **MR. GREENBERG:** Okay. I guess we'll call Ms. Arnold.

21 **THE COURT:** All right. Is it possible to finish her
22 today or not? Let's just see how it goes.

23 We'll take a 10-minute recess, and then we'll resume.

24 **THE CLERK:** All rise. This Honorable Court is now in
25 recess.

1 (Whereupon, a recess was taken from 4:44 p.m. to
2 5:01 p.m.)

3 **THE CLERK:** All rise. This Honorable Court resumes in
4 session.

5 **THE COURT:** All right. Next witness, please.

6 **MR. GREENBERG:** Your Honor, just briefly. Plaintiff
7 Reddy Annappareddy calls Pam Arnold.

8 **THE COURT:** All right.

9 (Witness sworn.)

10 **THE CLERK:** Take a seat in the witness stand box.
11 And for the record, ma'am, could you please state and
12 spell your first and last name, for the record.

13 **THE WITNESS:** Pam Arnold, P-A-M; A-R-N-O-L-D.

14 **THE CLERK:** Thank you.

15 - - -

16 **DIRECT EXAMINATION**

17 - - -

18 **BY MR. GREENBERG:**

19 **Q.** Good afternoon, Ms. Arnold.

20 **A.** Good afternoon, sir.

21 **Q.** You formerly worked for the Maryland Medicaid Fraud
22 Control Unit, or the MFCU, correct?

23 **A.** Yes.

24 **Q.** I'm just going to use the acronym MFCU, all right?

25 **A.** Yes, sir.

1 Q. You started there in January of 2007?

2 A. August of 2007.

3 Q. I believe you might be thinking of the month you left.

4 You left in August of 2015.

5 A. I did, and I started in August of 2007.

6 Q. Well -- all right. All right. And your position at the
7 MFCU throughout your tenure there, you were there for, I guess,
8 what, eight years?

9 A. Yes, sir.

10 Q. For those eight years, you were an investigator.

11 A. Yes, sir.

12 Q. As an investigator for the MFCU, you did your best to
13 provide accurate information to your teammates, right?

14 A. Correct.

15 Q. And if there was something important that you learned in
16 an investigation, you would tell your teammates, right?

17 A. All information was shared with teammates.

18 Q. All information was shared with teammates. Okay.

19 And by "teammates," just so we're clear, I'm using that
20 kind of as investigation team members.

21 A. I understand.

22 Q. Okay. And so you would share all information with your
23 fellow investigation team members?

24 A. We would have meetings pretty regularly, so all interviews
25 and any research or any information that had been -- or tasks

1 that had been completed prior to that meeting would be
2 discussed.

3 Q. And if something time sensitive came up and there wasn't a
4 scheduled meeting, you would let your colleagues know?

5 A. Yes.

6 Q. And the same applied when you were working with federal
7 agents, right?

8 A. Yes.

9 Q. And specifically in 2013, when you worked with Maura
10 Lating, you shared all -- everything with her?

11 A. It was a big team, so I don't know that every
12 communication was directed at all team members. So there may
13 have been some communications with investigators or with
14 attorneys that the whole team was not present.

15 Q. Okay. But everything sort of within your wheelhouse, so
16 to speak, your realm of responsibility, that came up, you would
17 share then-Special Agent Maura Lating?

18 A. Not everything. I mean, there were -- I mean, I still
19 worked for the MFCU, so there were conversations I was going to
20 have in the MFCU where Maura Lating may not have been present.

21 Q. All right. Well, let's put it this way, if there was
22 something that you learned during the investigation in the
23 spring or the months going after the spring in July 2013 that
24 you thought was important with respect to your role in the
25 investigation, you would let Maura Lating know, right?

1 A. Not with everything. I mean, if you want to give me
2 something specific, I can certainly speak to it. But the case
3 was big. There were a lot of different people. I worked for
4 the State. I was in the Attorney General's Office often,
5 having conversations with some of the investigators there, and
6 Maura Lating wasn't typically, you know, in my office. So I
7 can't say that every communication I had included her. No, I
8 cannot say that.

9 Q. Okay. Let me sort of back up, but I think I understand
10 the distinction.

11 So you would share everything with your colleagues in the
12 MFCU.

13 A. No. There's not one person I can say that every
14 communication I had, that there was one person that knew
15 specifically everything that I found out during the case.

16 Q. All right. Let me try to put it differently.

17 You shared everything you learned during the investigation
18 with the investigation team as a whole, whether it was, you
19 know -- I understand different people got different things,
20 but . . .

21 A. Right. Different people got different things. So I can't
22 say that every person knew about every communication I had.
23 No, I cannot say that.

24 Q. I understand what you're saying.

25 So with -- Maura Lating became the leader of the

1 investigation team in, like, early January 2013, right?

2 A. I don't know the exact date, but yeah she --

3 Q. Around then?

4 A. I'm not sure. It was Laurie Gutberlet initially in the
5 MFCU. I think the case went federal in -- sometime in 2012.
6 But I'm not sure exactly when Maura Lating became the lead
7 agent.

8 Q. All right. Well, fair to say that after Maura Lating
9 became the -- after the case went federal, Maura Lating was the
10 lead agent.

11 A. Yes.

12 Q. All right. And before Maura Lating joined the
13 investigation team, Robert Mosley had been working on the
14 matter for several months, right?

15 A. I don't recall. I don't know when team members joined the
16 case.

17 Q. Okay. You mentioned, I think, Laurie Gutberlet. She was
18 also an MFCU investigator, right?

19 A. Yes, sir.

20 Q. And she -- she -- she wrote a number of memos to the
21 Pharmacare file on her interviews, right?

22 A. Yes, sir.

23 Q. And, for example, you read her memos about interviews or
24 meetings with Dennis Tokofsky.

25 A. Some of them. I don't know -- I think so.

1 Q. Okay.

2 A. I don't recall how many there were that to actually state
3 that I read all of them.

4 Q. All right. Well, let's -- and you remember that Dennis
5 Tokofsky -- he was the so-called whistleblower, right?

6 A. Yes, sir.

7 Q. So let's -- you should have two binders in front of you,
8 ma'am.

9 A. Yes, sir.

10 Q. The one that has a black cover is the Plaintiff's exhibits
11 with no -- nothing under it. The other one is the Government's
12 Exhibits.

13 If you could please turn to Government's Exhibit 7. Let's
14 see if we can refresh your memory about when Special
15 Agent Mosley joined.

16 A. So I just go to number 7 in this book; that's what you're
17 referring to?

18 Q. Yes, ma'am. Tab 7, yes.

19 Just let me know when you're there.

20 A. I think I'm there.

21 Q. All right. Good.

22 Do you see how there's a memo to the Pharmacare file from
23 Laurie Gutberlet dated September 5th, 2012? It's the first
24 page.

25 A. It says "From Dennis Tokofsky."

1 Q. Are you behind tabs --

2 A. Sent to --

3 Q. Ma'am, are you behind Tab 7?

4 A. Behind it.

5 Q. Okay.

6 A. This first page Plaintiff's Exhibit No. 7, Case Number --

7 Q. I see. You're in the wrong -- so the other binder that
8 has a cover on it. Please turn to Tab 7 in that binder.

9 A. Okay. Yes, sir.

10 Q. Oh, actually, my outstanding colleague just pointed out
11 it's also on the screen. That would be easier for you.

12 A. Oh.

13 Q. Let's just do it that way.

14 So do you see how this is about a memo from Laurie
15 Gutberlet about a meeting on August 23rd, 2012? It's in the
16 very first sentence.

17 A. August 23rd, yes.

18 Q. And the meeting was with the so-called relator, or
19 whistleblower, Dennis Ross Tokofsky?

20 A. Yes, sir.

21 Q. The date in the memo in the top right is September 5th,
22 2012?

23 A. Yes, sir.

24 Q. And if you look on the left side, two people down is your
25 name, right? "Pamela Arnold."

1 A. Yes, sir.

2 Q. Okay. So you attended this meeting?

3 A. Yes, it looks like I did.

4 Q. And then you see to the right of your name is "Laurie
5 Gutberlet"?

6 A. Yes, sir.

7 Q. And under her name is "Dennis Tokofsky"?

8 A. Yes, sir.

9 Q. If we could scroll down a little bit, right under
10 Mr. Tokofsky is, "Robert Mosley," right?

11 A. Yes, sir.

12 Q. Does this refresh your recollection about when,
13 approximately, Robert Mosley joined the investigation team?

14 A. I mean, I can read what the memo says. I'm just saying I
15 don't recall that. I don't recall who all was at the table. I
16 mean, I understand what this memo says, and that this memo
17 points out that all these people were present during this
18 particular interview or meeting. I don't necessarily recall
19 that.

20 Q. All right. Fair to say that you do recall that Special
21 Agent Mosley joined the investigation team sometime before,
22 then Special Agent Lating?

23 A. I don't recall that.

24 Q. All right. Well, let's put it this way. Once the case
25 had, as you put it, "gone federal," at that point, we've

1 established that Maura Lating was the head of the team, right?

2 A. Yes, sir.

3 Q. And is it fair to say that once Maura Lating had joined,
4 Robert Mosley had already joined the team?

5 A. I don't recall.

6 Q. All right. We can move on from this.

7 Let's just kind of go back to the point about sharing
8 information. So as of -- let's just look at the time frame,
9 approximately early April 2013, Laurie Gutberlet left the MFCU,
10 right?

11 A. I think that's when she left, yes.

12 Q. Yeah. So after Ms. Gutberlet left, the sort of core
13 agent/investigators in the Pharmacare team were Maura Lating,
14 Robert Mosley, and you, right?

15 A. Oh, it was more than just the three of us. There was
16 Jimmy Ryan, Jimmy Young. There were, I think, a couple other
17 investigators who assisted from the MFCU. They assisted. But
18 I know Jimmy Ryan and Jimmy Young were part of the team as
19 well.

20 Q. Right.

21 But the folks who went to the roundtable meetings that you
22 testified about at your deposition, the core people were
23 Ms. Lating, Mr. Mosley, and you.

24 A. We were present at most of them. There may have been
25 other people present as well.

1 Q. Okay. But you three were kind of the regulars.

2 A. Yes.

3 Q. All right.

4 And fair to say that at those roundtable meetings you
5 shared any important information you had gathered on your own?

6 A. It may not have always come up then. Depending on -- I
7 wasn't the one running those meetings.

8 Q. Okay. But let's -- is it fair to say that either at the
9 roundtable meetings or in an email or in a memo from you to the
10 file, you would communicate important information that you
11 obtained to the team?

12 A. Pretty much all information. It didn't -- I don't know
13 what you're referring to as "important."

14 Q. Okay.

15 A. But any tasks that were to be completed would have been
16 shared, communicated with somebody on that team.

17 Q. Okay. Let's just sort of back up.

18 And you wouldn't have withheld anything that you thought
19 was significant from your teammates, right?

20 A. Somebody would have been -- there would have been a
21 communication about a task that was assigned to me with
22 somebody on the team.

23 Q. And you were aware after Ms. Gutberlet left the
24 Pharmacare -- left MFCU, rather, in early April 2013, that
25 Maura Lating was working on drafting, first, a Google affidavit

1 that was turned to a search -- a location affidavit, right?

2 A. I remember something about the Google affidavit. I didn't
3 work on -- or I don't recall much about the Google affidavit.

4 Q. Well, you remember that in those months, during that time
5 frame, Maura Lating was working on drafting an affidavit that
6 ended up being presented on July 23rd, 2013?

7 A. Yes.

8 Q. Okay. And I want to kind of just briefly circle back to
9 Laurie Gutberlet. You knew from her, at least by sometime in
10 2012, that she had spoken with Lisa Ridolfi about becoming a
11 whistleblower, right?

12 A. Not about becoming a whistleblower. She became a
13 cooperating witness.

14 Q. You don't remember Laurie Gutberlet telling you that?

15 A. About Lisa Ridolfi being a whistleblower?

16 Q. Correct.

17 A. No, I don't recall that.

18 Q. Okay. We're going to play something for you and see if
19 that can refresh your recollection.

20 Please watch the screen. Okay?

21 MR. EISER: Objection. I believe he's going to replay
22 witness testimony from a different witness.

23 MR. GREENBERG: So anything can be used to refresh
24 recollection.

25 MR. EISER: I don't believe that's accurate.

1 **THE COURT:** Anything can be used. It can be a video.
2 Let's just see. I'm not sure how much I'll allow. But go
3 ahead, you can go forward.

4 (Video playing.)

5 **BY MR. GREENBERG:**

6 **Q.** Does that refresh your recollection, Ms. Arnold?

7 **MR. EISER:** Objection. It doesn't say that she told
8 her. Sorry, Your Honor.

9 **THE COURT:** Go ahead. Just answer the question.

10 **THE WITNESS:** I don't recall having that conversation
11 with Ms. Gutberlet.

12 **THE COURT:** All right. Let's move on.

13 **BY MR. GREENBERG:**

14 **Q.** Let's kind of go back briefly to Dennis Tokofsky. You
15 knew that he was the whistleblower who triggered the
16 investigation at Pharmacare, correct?

17 **A.** Yes.

18 **Q.** And you understood from your -- I don't know, I guess at
19 that point, it was maybe around six years of experience at the
20 MFCU, that someone who was a whistleblower had to be
21 scrutinized?

22 **A.** "Scrutinized"? What do you mean by that?

23 **Q.** Well, let me put it differently.

24 You understood that a relator in a *qui tam* action had a
25 financial interest in the result?

1 A. Yes.

2 Q. All right. And I want to fast-forward now to early
3 July 2013, shortly before the Lating affidavit was finalized.

4 At that point in time, you, Mrs. Arnold, learned in
5 writing that Ms. Ridolfi wanted to be the whistleblower, right?

6 A. I recall there being an email -- I recall Lisa Ridolfi
7 writing up something, handwriting something, yes.

8 Q. And that something followed a conversation with you and
9 Maura Lating, right?

10 A. No.

11 Q. No?

12 A. I don't think so. I don't think Maura Lating and I ever
13 had a conversation about that.

14 Q. Let me phrase it differently. You --

15 A. You're referring to Lisa Ridolfi being a whistleblower,
16 correct?

17 Q. I'm referring to -- and let me be real specific --

18 A. Okay.

19 Q. -- early July 2013, you did have a communication including
20 Maura Lating that related to Lisa Ridolfi wanting to be the
21 whistleblower, right?

22 A. I don't recall that. If you want to show me the document
23 you're looking at, that might help.

24 Q. Let me see if I can refresh your recollection by showing
25 you this email.

1 I'm going to sort of focus on the latest email in time,
2 actually. Do you see how you, Pam Arnold, sent this email to
3 one of the prosecutors July 3rd, 2013, 1:17 p.m.?

4 A. Yes, sir.

5 Q. And you see how there's an attachment?

6 A. Yes, sir.

7 Q. And it says "RIDOLFI_LETTER," in all caps?

8 A. Yes, sir.

9 Q. And you wrote, "I picked up the handwritten letter from
10 Lisa this morning. I've scanned it, and it is attached.
11 Should I mail the original to the judge." Right?

12 A. Yes, sir.

13 Q. Let's look now at the email below that.

14 A. Yes, sir.

15 Q. I should have mentioned, this is already in evidence.

16 THE COURT: What's the exhibit number? What's the
17 exhibit number?

18 MR. GREENBERG: Sorry. Plaintiff's 137.

19 BY MR. GREENBERG:

20 Q. So Plaintiff's 137, let's just go to look at the email
21 below.

22 And by the way -- well, first, let me ask you this,
23 Ms. Arnold: Does this email, about you picking up the
24 handwritten letter from Lisa, refresh your recollection about
25 Lisa Ridolfi wanting to be the whistleblower in the Pharmacare

1 case?

2 A. I think I was assigned that task. Because if you look at
3 the email, July 1st, Sandy is asking me to do something, and
4 then I'm responding to her email.

5 Q. And who's copied on that July 1st, email to you?

6 A. Maura Lating.

7 Q. Right.

8 And so after you got the letter from Lisa Ridolfi about
9 wanting to be the whistleblower, you then -- because you're a
10 good teammate, you let Ms. Lating know about that?

11 MR. EISER: Object to the mischaracterizes of the
12 letter.

13 Counsel keeps saying "The letter says Lisa Ridolfi" --

14 MR. GREENBERG: Let's not do a speaking objection.
15 (Cross talk.)

16 MR. GREENBERG: -- you're not the witness here --
17 (Cross talk.)

18 MR. GREENBERG: -- you're not the witness here --

19 THE COURT: Wait just a minute.

20 I do think you're mischaracterizing what the letter said.
21 Do I understand the correct objection?

22 MR. EISER: Yes, Your Honor. It just says she has a
23 question.

24 THE COURT: I think it misstates what the evidence is.

25 BY MR. GREENBERG:

1 Q. Let's look at the letter, and maybe we can clear this up.
2 Let's go to the attachment. And let's go -- one, two, three,
3 four, five -- fifth line down. You see where it says, quote,
4 "I had a question about how to be the whistleblower in the
5 case, so I sent him an email"?

6 A. Yes.

7 Q. And I think you've already said your memory has been
8 refreshed, but you agree that here, Lisa Ridolfi is expressing
9 interest in becoming the whistleblower in the case?

10 A. She's expressing interest, yes.

11 Q. Right.

12 And so this is something that you -- you let Maura Lating
13 know about?

14 A. It is -- I responded to Sandy's email. So she asked me to
15 reach out to Lisa because Lisa stated something along -- if you
16 could flashback to the email, sir, please.

17 Q. Well --

18 A. If you look at the email -- can I please answer?

19 **THE COURT:** Finish your answer. Go ahead.

20 **THE WITNESS:** So if you look at the email,
21 Ms. Wilkinson is asking me about whether or not Lisa has been
22 able to get in touch with her attorney. And so once I get in
23 touch with Lisa, because Ms. Wilkinson has asked me to, I
24 responded to Ms. Wilkinson.
25

1 **BY MR. GREENBERG:**

2 **Q.** Right.

3 But you knew that Maura Lating was kind of in the final
4 stages of drafting that affidavit then, right?

5 **A.** I don't know what stage of the affidavit, but I know
6 Ms. Lating was working on the affidavit.

7 **Q.** Uh-huh. And you knew that it was important for Ms. Lating
8 to know that a source such as Lisa Ridolfi had or wanted to
9 have a financial interest in the result, right?

10 **A.** I responded to Ms. Wilkinson because she asked me to do
11 something. I then followed protocol by scanning it and putting
12 it in so it was available to the team, should the team need to
13 review it.

14 **Q.** So I'm going to ask you, please, just listen carefully to
15 my question, and answer my question.

16 **A.** Okay.

17 **MR. GREENBERG:** Could the court reporter please read
18 back my question.

19 (Reporter read back as requested.)

20 **THE WITNESS:** I don't know that I knew it was a
21 significant piece of information at that time.

22 **BY MR. GREENBERG:**

23 **Q.** And are you saying -- is it your testimony then,
24 Ms. Arnold, that you did not share that information --

25 **A.** I wasn't intentional. I think I --

1 Q. Ma'am --

2 (Cross talk.)

3 A. I apologize. I apologize.

4 Q. Is it your testimony, Ms. Arnold, that you did not share
5 information about Lisa Ridolfi expressing interest in becoming
6 the whistleblower with Maura Lating?

7 A. I think she knew about it. I'm sure it came up at a
8 roundtable discussion, because we would have had numerous
9 roundtable discussions prior the filing of the affidavit, as I
10 stated earlier.

11 MR. GREENBERG: All right. I have nothing further for
12 this witness at this time.

13 THE COURT: Any additional questions?

14 MR. EISER: I have a few, Your Honor.

15 THE COURT: All right. Go ahead.

16 - - -

17 CROSS-EXAMINATION

18 - - -

19 BY MR. EISER:

20 Q. Ms. Arnold, good afternoon.

21 A. Good afternoon.

22 Q. Tell Judge Anderson where you were born and raised.

23 A. Little bit of everywhere, but I lived in Baltimore for
24 35 years, so primarily here. I currently live down in Georgia.

25 Q. What's your job now?

1 A. I'm a healthcare senior investigator.

2 Q. For who?

3 A. Optum.

4 Q. What was your work history before joining the Maryland
5 Medicaid office?

6 A. I was a private investigator doing insurance fraud for
7 17 years.

8 Q. For who or what company?

9 A. I worked for a company called EnQuest in Perry Hall. So
10 we did workers' comp, auto liability, home owner's liability,
11 product liability.

12 Q. Okay. And you've told us you joined Maryland Medicaid
13 Fraud Control Unit in 2007?

14 A. Yes, sir.

15 Q. What was your job -- job title with Maryland Medicaid?

16 A. Investigator.

17 Q. What type of investigator?

18 A. Criminal.

19 Q. Any particular types of crime?

20 A. Healthcare, Medicaid fraud, that was what I did.

21 Q. And how many healthcare fraud investigations did you
22 participate in over the time that you were at MFCU?

23 A. Probably a hundred, more than a hundred. I don't know
24 exactly.

25 Q. Okay. Did you know Mr. Annappareddy prior to your

1 assignment to work on this criminal case?

2 A. No, sir.

3 Q. Did you know anybody who knew him?

4 A. No, sir.

5 Q. Had you ever heard of him from any person or source?

6 A. No, sir.

7 Q. When did you start working on the criminal case?

8 A. Summer of 2012, with Laurie Gutberlet.

9 Q. Okay. When you became involved, did you read Laurie
10 Gutberlet's prior memos and reports of her investigation?

11 A. I don't know if I did initially because she handled all of
12 that. I was assigned tasks that I would do an assist. So I
13 don't know that I necessarily -- I think she probably brought
14 me up to speed. I don't recall, necessarily, taking a day and
15 reading through everything.

16 Q. Over the course of the investigation, do you think you
17 read all --

18 A. Probably the majority of them, I would say.

19 Q. How was the investigation structured?

20 A. How do you mean, sir? I mean, like --

21 Q. Here, let me do it this way.

22 This is Defense Exhibit 95, which is in evidence.

23 **MR. GREENBERG:** Your Honor, just briefly, we actually
24 never got a copy of that, as far as I know. And we would ask
25 for a copy now if there are any questions about it.

1 **THE COURT:** All right. Furnish him a copy, please.

2 **BY MR. EISER:**

3 **Q.** Is what we've got up on the screen, Defense Exhibit 95,
4 does that contain the names of the people who worked on the
5 Pharmacare investigation, to your knowledge?

6 **A.** Yes, sir.

7 **Q.** Who's Peggy Gayhardt?

8 **A.** That was my immediate supervisor --

9 **Q.** What if any -- go ahead.

10 **A.** -- in the Medicaid Fraud Control Unit.

11 **Q.** What, if any, role did she have on the investigation?

12 **A.** I don't know that she did, frankly.

13 **Q.** She was your supervisor, right?

14 **A.** Yeah. I mean, I would -- I would brief her occasionally
15 because I was spending so much time out of the office, so . . .

16 **Q.** The Laurie Gutberlet, what was her role in the
17 investigation?

18 **A.** She was initially the lead investigator. The case was
19 assigned to her initially, so she would have been lead in the
20 MFCU.

21 **Q.** What -- to the extent you know, what tasks did she do?

22 **A.** All of them. I mean, you know, she was putting the case
23 together, soup to nuts, so to speak. So she was doing the
24 interviews. She was looking at policies, making sure that, you
25 know, what Medicaid policies we had pertaining to pharmacies

1 and medications and the different medications that were being
2 dispensed and figuring out who the recipients were that were
3 receiving the medications. All of it.

4 Q. What was your experience with Ms. Gutberlet as an
5 investigator? Did you work with her for a while?

6 A. I don't know --

7 Q. Not on this case, I just mean in general.

8 A. In general, I think we had worked together a couple of
9 times. I don't recall exactly when she came to the MFCU. It
10 was after I had been there. But I think we had assisted each
11 other a couple of times.

12 Q. Was she an experienced investigator?

13 A. Yes.

14 Q. And what was your assessment of her investigative skills?

15 A. She was sharp. She was a major in the Baltimore City
16 Police Department. She was -- she was sharp.

17 Q. And how about her writing for reports?

18 A. Oh, she -- she was very good at that. Very detailed.
19 Very accurate, concise reports.

20 Q. Okay. Jeremy Dykes, was he on the -- did he play a role
21 in the investigation?

22 A. I think he did. But I don't -- I don't recall him -- us
23 working on the same piece of the case as much.

24 Q. Do you know what piece he worked on?

25 A. I think he had something to do with the in-and-out

1 analysis, but I didn't work on that.

2 Q. And to the extent you know, did he have extensive
3 experience doing healthcare fraud investigations?

4 A. To my knowledge, he did.

5 Q. And Cathy Pascale, did you know her?

6 A. Yes. I worked with her often.

7 Q. And what was your assessment of her investigative skills?

8 A. She was a great attorney. I mean, we would sit down and
9 discuss a case, spin it a couple different ways, you know, to
10 see whether or not it warranted further review, made sure we
11 had all of our ducks in a row in all of our cases. She was
12 very good. Very experienced.

13 Q. Thank you.

14 Michael DiPietro, had you worked with him before this
15 case?

16 A. No.

17 Q. What was your experience of working with him in this case?

18 A. I liked him a lot. He was smart. And he was very good at
19 spinning things and making sure that we looked at things all
20 the way around, like a 360 view of things. So he -- I liked
21 him a lot. He was very, very smart.

22 Q. What about James Hagin, had you worked with him?

23 A. He was another investigator in the MFCU. I don't know
24 what his role was in this case. I don't remember him having a
25 big role in this case.

1 Q. Okay. James Ryan, was this the first case you worked on
2 with him?

3 A. Yes.

4 Q. What was your assessment of his --

5 A. He was another guy, he was a hard worker. He showed up,
6 he did whatever was asked of him. He was smart. He was a good
7 guy.

8 Q. Okay. And Robert Mosley, had you worked with him before?

9 A. I don't think I had worked directly with him. But I had
10 seen him around the office, so I definitely knew who he was
11 prior to this case.

12 Q. And what was your impression of his skills and his --

13 A. He was experienced. He was very good, yeah.

14 Q. Sandra Wilkinson, had you worked with her before?

15 A. No.

16 Q. What was your assessment of her role on the team?

17 A. Same thing, she was very sharp, knowledgable. I think she
18 was head of the criminal, you know, unit here in the U.S.
19 Attorney's Office. Yeah, she was sharp.

20 Q. Jimmy Young, had you ever worked with him before?

21 A. No. I don't remember him having a very big role, either.
22 So I don't know exactly what his responsibilities were. So I
23 don't recall too much with him, necessarily. So I don't know
24 much about his experience.

25 Q. Maura Lating, what was your impression of her?

1 A. This was not her first, you know, case, healthcare case
2 for sure. So she knew what she was doing. She was very
3 experienced, no problem taking the lead. She was very good.

4 Q. What's your assessment of the whole team in terms of
5 comparing it to other investigative teams that you've worked
6 on?

7 A. I mean, this team had a lot of experience. It was a great
8 team. Everybody worked hard. Everybody did what was asked of
9 them, you know. It took us months to write that affidavit to
10 make sure that it was, in fact, accurate, it was fluid, it was
11 changing. You know, we would have these meetings to
12 corroborate all the evidence that we were getting from
13 different witnesses and different documents that we may have
14 received. So it was a very good experienced, hard-working
15 team.

16 Q. What was your role, once you joined the team?

17 A. I was just running task, primarily. You know, I didn't --
18 I didn't necessarily have one particular piece that I worked
19 on. You know, I just assisted. If they needed help going
20 through some binders and looking for something specific, I did
21 that. I did a good bit of interviews, primarily with the
22 Medicaid recipients. You know, I assisted on some of the
23 interviews with employees.

24 Q. Did you get involved in the undercover activity?

25 A. I did, yes.

1 Q. How so?

2 A. So I -- I was given a Medicaid insurance card and a couple
3 of scripts that I had taken to Plumtree. And I think they
4 had -- I think it had five or six refills on it. I don't
5 remember exactly what the medications were now, but -- and I
6 went and as Janet Jaswinski.

7 MR. EISER: Your Honor, I might have another half hour
8 or 40 minutes with this witness.

9 THE COURT: I don't think we should push it much
10 further. Let's go ahead and adjourn for the day.

11 MR. GREENBERG: Your Honor, just one brief -- oh, I'm
12 sorry. Yeah, the witness should be excused, I guess.

13 THE COURT: You should be back tomorrow at 9:30.

14 THE WITNESS: Okay. Thank you, sir.

15 THE COURT: Do you want to start at 9:00 or 9:30?

16 MR. GREENBERG: I think 9:30 is sufficient.

17 THE COURT: All right. We'll resume at 9:30 tomorrow
18 morning.

19 MR. GREENBERG: I just want to remind the witness to
20 not talk about the substance of her testimony --

21 THE COURT: Ms. Arnold, don't discuss your testimony
22 with anyone overnight.

23 THE WITNESS: Okay. Thank you, sir.

24 THE COURT: Thank you.

25 (Witness exits.)

1 **THE COURT:** All right. Let's get a little prediction,
2 a roadmap, so to speak, of what will happen tomorrow. Who will
3 be put up tomorrow?

4 **MR. GREENBERG:** That was what I wanted to raise, Your
5 Honor. So I believe -- and my colleagues will correct me if
6 I'm wrong -- that we might have a gap after -- a little bit of
7 a gap after Ms. Arnold. But we would ask the Government bring
8 their three witnesses on Wednesday. And -- that's sort of the
9 idea is to maybe like, do a -- perhaps sort of a half day
10 tomorrow, and then try to get in a full day on Wednesday. I'm
11 sorry, I actually misspoke. There's a witness we have . . .

12 I'm sorry, this is all moving, and I lost track a little
13 bit.

14 So what we would suggest is we do kind of a -- finish
15 Ms. Arnold tomorrow, and we have -- we do have a character
16 witness coming. I think he's able to come at 4:00. Oh, until
17 Wednesday. So what might make the most sense is to, after
18 Arnold tomorrow, take the rest of the day off, and then have
19 the Government's three witnesses come on Wednesday. We would
20 do -- we have -- we have -- Mr. McCray, I think, is available
21 at 9:00, if I remember correctly. And then we can do the three
22 Government witnesses.

23 So based on the estimates, it won't take terribly long.

24 And Dr. Vaidya will be there at 4:00 on Wednesday.

25 **THE COURT:** How long will the Government's three

1 witnesses take?

2 **MR. PHELPS:** So we have four witnesses, Your Honor.
3 And we think we can get three of them here tomorrow. So that
4 we're not -- to avoid any gaps --

5 **THE COURT:** Are you good to go tomorrow?

6 **MR. PHELPS:** Yeah.

7 **THE COURT:** All right. Why not move right ahead with
8 them tomorrow?

9 **MR. GREENBERG:** Well, I mean, I guess, Your Honor, I
10 suppose that would be fine. All I'm pointing out is I think
11 we're going to have a gap at some point because --

12 **THE COURT:** Well, I'd rather just move ahead as much
13 as we can if the Government can have its witnesses here
14 tomorrow. Let's finish with Ms. Arnold, get through,
15 hopefully, the Government's three witnesses tomorrow, and then
16 we'll pick back up on Thursday. And if we have a gap Thursday,
17 then we'll just work around it. I mean, some of these
18 witnesses may take longer than we think, and then we don't have
19 a gap later. If we build in a gap tomorrow, we've lost that
20 time.

21 **MR. GREENBERG:** That's a very good point.

22 We would just ask, I think we now know that
23 Craig Blomquist, who had been off the list, is now back on the
24 Government's list.

25 If we could just know the order of the witnesses.

1 **MR. PHELPS:** Tomorrow will be DiPietro, Ryan,
2 Blomquist.

3 **MR. GREENBERG:** Okay. And, I mean, just, I think, for
4 everybody's planning purposes, it would be helpful to know if
5 Ryan is going to be getting into the Ryan analysis and all that
6 stuff.

7 **MR. PHELPS:** Your Honor, I think consistent with what
8 we've done previously, we will get into it, but it will be
9 very, very limited. It's not going to represent any
10 significant chunk. It may just be a couple of questions.

11 **THE COURT:** All right.

12 **MR. PHELPS:** The thrust of his testimony will focus,
13 obviously, on preindictment --

14 **THE COURT:** All right. Now, you mentioned three
15 witnesses tomorrow, but a moment ago you said four.

16 **MR. PHELPS:** So we have four remaining, Your Honor.
17 Three will be available -- excuse me.

18 Let's take Ms. Pascale and Ms. Wilkinson out of it. We
19 have four other witnesses: Jeremy Dykes, Michael DiPietro,
20 Craig Blomquist, and James Ryan.

21 Mr. Dykes will not be available until Wednesday.
22 Everybody else will be available tomorrow.

23 **THE COURT:** All right. And then after he's up on
24 Wednesday, where do we go from there?

25 **MR. GREENBERG:** Well, I mean, on Wednesday -- I mean,

1 on Wednesday, we've got at least -- we have two character
2 witnesses, Ernest McCray at 9:00 a.m., I think probably the
3 time.

4 And then Dr. Vaidya, I believe, will be at 4:00 that day.

5 I think at that point we will have a -- oh, wait,
6 Mr. Dykes. Mr. Dykes on Wednesday. So we've got that.

7 I will just -- I just want to briefly note about James
8 Ryan --

9 **THE COURT:** Come back to that. Let's just walk
10 through the witnesses for the rest of the week, if we could.

11 What happens next, after that last one? You've got your
12 two character witnesses you're going to go put up Wednesday.

13 **MR. GREENBERG:** So Bill Fassett, he's our pharmacy
14 expert. We've asked him to come, I think, early next week.
15 And, unfortunately, his wife is pretty seriously ill, he has to
16 arrange care for her. So I don't think he could move up his
17 trip. But we could try. I'll call him and see. But I don't
18 know other than until -- oh, I'm sorry. I apologize, Your
19 Honor.

20 You were asking about whether we can do one of the
21 character witnesses tomorrow?

22 **THE COURT:** I'm just trying to map out a game plan for
23 the rest of this week so we don't have too much wasted time.

24 **MR. GREENBERG:** Well, we could do Dr. Vaidya at
25 4:00 tomorrow. That actually -- slide him in there.

1 **THE COURT:** That's fine with me.

2 Any problem?

3 **MR. PHELPS:** No, Your Honor.

4 (Counsel conferring.)

5 **THE COURT:** So we're going to have the rest of
6 Ms. Arnold, three Government witnesses, and a character witness
7 tomorrow? Is that doable?

8 **MR. GREENBERG:** Well, I mean, I believe -- and you
9 guys will correct me, but I believe the estimates for DiPietro
10 and Dykes were, I think, one to one and a half hours each,
11 maybe two hours, I don't know, on direct. I can't say for sure
12 what our -- how long our crosses will be.

13 But then Ryan, I believe, we were told a half an hour.

14 **THE COURT:** All right. Well, just have your character
15 witnesses here tomorrow. Let's have a full day tomorrow, if we
16 possibly can. And then tomorrow, we'll regroup and talk about
17 the next day.

18 **MR. GREENBERG:** Thank you, Your Honor.

19 And just one thing that I wanted to point out that could
20 cause significant delay and motions and arguments and I think
21 it would really be an issue if this comes in, Special
22 Agent Ryan did a 106-page spreadsheet with hundreds of
23 patients, varied -- a lot of information that was introduced as
24 an exhibit from the Government at trial. It was called the
25 "Ryan analysis," by the nickname. If that comes in,

1 cross-examining Ryan is going to take days, I'm afraid.

2 **MR. PHELPS:** I mean, that's not reasonable in the
3 least bit, Your Honor. Asking him if he prepared a spreadsheet
4 and what he did to prepare the spreadsheet does nothing to say
5 that he needs to testify for days.

6 (Cross talk.)

7 **THE COURT:** Does the spreadsheet contain information
8 that I need to know for this case, or was it, more or less,
9 trial related?

10 **MR. PHELPS:** It was trial related, Your Honor.

11 But back to Your Honor's comments about post-indictment
12 evidence being -- having some of it --

13 **THE COURT:** Right.

14 **MR. PHELPS:** -- admissibility regarding things like
15 causation. He is going to provide, essentially, evidence that
16 pills recovered in the search warrant were found not to be
17 reversed, at a general level. We don't need the spreadsheet
18 in, we don't need the specific dollar amount in the
19 spreadsheet.

20 **THE COURT:** So you might not offer a spreadsheet, in
21 other words.

22 **MR. PHELPS:** I mean, we don't need to offer the
23 spreadsheet, Your Honor.

24 **MR. GREENBERG:** Even that piece that was just
25 mentioned is problematic. Because Ryan did -- this is all

1 after-acquired evidence, all of it for Ryan, unless I'm missing
2 something. His main role was to sort of itemize the things
3 found at Eloise Lane, which was a product of the illegal search
4 on July 25, 2013. The Government would've never even known
5 about the stuff at Eloise Lane had they not coerced a witness,
6 intimidated a witness on or after July 25th, 2013, that Sindhu
7 Motaparthi the one we've shown that Lating threatened.

8 So getting into Ryan is a real can of worms, a real
9 Pandora's box, because the Eloise Lane is in August.

10 And the other thing is, I mean, if he even mentions the
11 Ryan analysis, we have to show it entirely, or, like, it's
12 false. And we can do that --

13 **THE COURT:** It's been a long day today. Let's don't
14 bog down. I'll have to hear it and put it in context, and I'll
15 rule on it at the appropriate time.

16 **MR. PHELPS:** Judge Anderson, one slight scheduling
17 change. I'd like to put our two character witnesses on
18 Wednesday. Because Dr. Vaidya is one of the head pharmacists
19 at the University of Maryland, so to bring him in tomorrow, in
20 the afternoon, if we don't get to him, it's going to be --

21 **THE COURT:** All right. Bring him in Wednesday,
22 that'll be fine.

23 All right. Anything further?

24 **MR. GREENBERG:** No, Your Honor.

25 **THE COURT:** All right. We'll be in recess until

1 9:30 tomorrow morning.

2 **THE CLERK:** All rise. This Honorable Court is in
3 recess.

4 (Adjourned at 5:47 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 5th day of June 2023.

Ronda J. Thomas

Ronda J. Thomas, RMR, CRR
Federal Official Reporter

<p>BY MR. EISER: [1] 213/2</p> <p>BY MR. FLOWERS: [3] 45/10 47/8 47/22</p> <p>BY MR. GREENBERG: [17] 98/7 101/11 102/4 102/21 104/3 150/7 150/17 158/15 160/12 162/2 163/2 163/14 165/24 167/7 204/5 208/25 209/22</p> <p>BY MR. PHELPS: [12] 120/16 120/20 131/19 133/25 136/7 136/19 138/6 142/19 145/13 146/2 148/1 169/5</p> <p>MR. ANNAPPAREDDY: [1] 178/3</p> <p>MR. EISER: [9] 169/22 179/8 203/21 203/25 204/7 207/11 207/22 210/14 218/7</p> <p>MR. FLOWERS: [71] 3/5 3/8 3/12 6/13 7/4 8/23 9/1 9/6 9/12 9/15 9/20 10/1 12/6 13/4 13/21 14/12 14/15 15/7 15/13 15/22 17/23 18/16 21/18 22/3 23/1 33/19 40/6 42/22 43/19 46/6 46/12 46/14 46/18 46/25 47/16 47/19 48/24 49/16 50/17 50/21 50/25 51/10 51/19 52/2 53/10 53/13 58/25 61/13 61/22 61/24 62/6 64/17 65/22 66/13 66/17 74/8 74/12 74/18 78/18 81/15 83/18 84/7 84/20 84/24 90/21 91/5 124/17 124/23 125/12 125/17 125/22</p> <p>MR. FRONZAGLIA: [2] 191/17 192/7</p> <p>MR. GREENBERG: [172] 3/16 4/19 84/11 85/1 86/6 86/12 86/17 87/1 87/5 87/15 87/19 88/13 88/24 89/6 89/12 90/7 91/11 91/16 91/21 92/3 94/6 94/9 101/2 101/4 101/25 102/14 103/25 106/2 106/5 106/12 106/15 106/20 106/23 107/24 108/2 111/21 112/5 112/11</p>	<p>112/14 112/23 113/10 114/4 114/11 114/17 115/9 117/14 117/16 117/23 118/13 118/24 120/4 120/18 121/10 121/20 121/24 122/10 122/14 122/18 125/20 126/1 126/6 128/6 128/10 128/15 131/13 133/20 135/25 136/18 136/22 136/24 137/23 139/11 142/12 143/1 143/24 144/22 144/25 145/18 147/21 148/21 155/7 155/14 155/20 156/5 156/14 157/9 158/13 161/19 161/25 162/23 163/7 164/3 164/6 164/19 164/21 167/5 167/22 168/1 168/8 168/25 169/11 169/19 169/23 170/13 170/21 171/4 171/12 171/20 172/1 172/6 172/12 172/16 173/12 175/3 175/9 175/23 176/16 177/7 177/25 178/18 178/22 180/16 181/5 181/22 182/1 182/13 182/18 182/21 182/23 182/25 183/4 183/6 183/12 183/16 183/20 184/9 184/12 184/20 184/23 185/4 185/14 186/8 187/10 188/10 191/23 191/25 192/5 192/17 192/20 193/6 203/23 206/18 207/14 207/16 207/18 209/17 210/11 212/23 218/11 218/16 218/19 219/4 220/9 220/21 221/3 221/25 222/13 222/24 223/8 223/18 224/24 225/24</p> <p>MR. MILLER: [1] 176/12</p> <p>MR. PHELPS: [134] 10/18 11/1 11/15 11/23 13/11 17/12 18/7 19/9 20/2 20/6 20/10 20/13 20/16 21/4 21/10 21/15 22/17 33/18 40/9 42/20 43/17 45/7 46/8 47/6 47/20 49/25 50/2 51/14 53/12 60/22 61/8 61/10 61/16 61/23 62/4 64/15 65/20 71/8 74/10 78/16 81/14 82/19 83/15 84/15 97/7 97/25 106/8</p>	<p>111/24 113/14 114/8 114/13 115/11 115/15 116/4 116/10 118/16 119/2 121/16 121/23 122/4 122/9 123/16 123/21 124/3 128/8 131/15 136/1 137/1 137/25 138/3 139/13 143/25 145/2 145/6 147/23 148/18 149/25 150/15 152/22 155/12 156/1 161/18 164/17 167/2 168/2 168/13 169/1 169/15 169/20 170/2 172/17 179/14 179/17 179/21 180/6 180/8 182/9 183/23 184/8 184/13 185/7 186/11 186/22 188/3 188/20 189/15 189/17 189/23 189/25 190/2 190/8 190/10 190/12 190/14 190/16 190/18 190/20 190/24 191/4 191/10 191/12 192/8 220/2 220/6 221/1 221/7 221/12 221/16 223/3 224/2 224/10 224/14 224/22 225/16</p> <p>MS. FARBER: [21] 3/15 85/13 85/23 86/3 86/25 87/18 87/25 88/5 88/11 88/17 89/10 89/18 124/9 126/12 126/16 126/18 126/20 126/24 127/1 127/5 178/8</p> <p>THE CLERK: [22] 23/3 23/5 23/9 23/14 46/16 50/7 50/11 66/20 66/23 67/3 67/7 90/15 90/19 122/23 123/2 173/6 173/10 192/24 193/3 193/10 193/14 226/2</p> <p>THE COURT: [322] THE WITNESS: [45] 23/7 23/11 46/22 53/16 67/1 67/5 71/10 84/18 92/8 98/3 113/3 113/13 113/17 115/16 118/18 119/3 120/6 121/12 131/17 133/24 136/3 137/4 138/2 138/5 139/15 142/15 143/5 144/3 145/5 145/9 145/21 145/23 147/25 150/4 157/10 169/3 169/14 174/10 184/4 193/13 204/10 208/20</p>	<p>209/20 218/14 218/23</p> <p>\$</p> <p>\$150,000 [1] 100/6 \$2.98 [2] 129/7 129/15 \$3 [1] 144/8 \$3 million [1] 144/8 \$31,933.36 [1] 59/18 \$4 [4] 144/16 145/15 151/12 151/13 \$4 million [4] 144/16 145/15 151/12 151/13 \$4.7 [1] 98/5 \$4.7 million [1] 98/5 \$7.49 [3] 130/4 130/11 130/13 \$96,913.11 [1] 130/12</p> <p>'</p> <p>'14 [1] 48/13 '15 [1] 48/13 '23 [1] 24/3 'He [1] 64/7</p> <p>-</p> <p>-R-A-G-N-A-B-E-N [1] 67/6</p> <p>1</p> <p>1 milligram [4] 117/1 128/23 157/19 157/24 1 milligram/millimeter [1] 158/6 1/3/2007 [1] 121/18 1/6/2012 [1] 121/18 10 [4] 62/18 62/20 123/17 157/15 10 minutes [2] 182/6 182/6 10 years [3] 18/18 173/21 187/23 10-minute [2] 50/3 192/23 10-minutes [1] 87/13 100 milligrams [1] 114/25 100 percent [2] 135/2 138/21 101 [1] 1/24 106-page [1] 223/22 108 [1] 2/9 10:10 [1] 50/9 10:10 last [1] 4/21 10:24 [1] 50/9 10th [1] 173/19 11 [1] 59/16 11 minutes [2] 170/22 172/16 115,755 [1] 96/24 11:17 [1] 90/17</p>	<p>11:32 a.m [1] 90/18 11:40 p.m [1] 55/22 11th [2] 6/8 173/19 12 [1] 94/12 12,000-unit [1] 121/7 12,033 [1] 164/1 12,913 [1] 165/16 12,939 [2] 165/18 165/20 12,960 [2] 166/13 166/14 12:22 [1] 122/25 12:25 [1] 122/20 12th [4] 6/9 6/10 10/19 180/1 13 [2] 64/1 64/1 137 [2] 206/18 206/20 13th [3] 179/15 180/3 180/4 14 [5] 80/5 80/12 80/15 80/23 142/1 14 days [2] 80/18 80/20 141 [4] 89/16 172/1 172/6 182/3 1410 [1] 30/4 1410 Hartford [1] 30/3 142 [2] 92/25 118/25 144 [4] 73/18 73/19 73/22 74/9 146 [8] 46/5 47/2 47/17 72/20 72/21 73/8 73/9 73/11 148 [1] 2/9 149 [8] 38/23 38/25 39/3 39/4 39/12 39/19 40/3 40/7 1495 [88] 93/23 94/1 94/14 94/17 94/19 95/3 96/6 96/21 96/24 98/9 98/10 98/12 98/21 98/25 99/2 99/21 99/23 100/8 100/22 101/15 104/16 108/14 108/17 110/2 110/11 110/23 111/11 111/12 111/15 120/3 120/25 121/6 121/17 121/22 128/12 129/14 132/19 133/8 133/14 134/6 134/14 135/21 136/4 136/12 136/15 137/6 137/18 137/22 138/8 138/19 139/23 139/25 140/2 140/4 140/7 140/10 140/12 140/16 141/10 141/19 141/23 142/9 142/24 143/11 143/23 144/20 149/9 149/23 150/5 150/13 151/14</p>
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1 1495... [17] 151/18 151/24 152/2 152/5 152/17 153/7 153/11 153/24 156/3 159/12 159/13 167/10 167/11 169/4 169/7 186/15 188/21 14th [12] 123/13 126/22 126/23 126/25 127/2 172/24 175/11 176/4 178/19 178/21 179/23 180/5 15 [15] 114/24 115/4 115/13 149/3 158/4 160/16 160/25 162/12 162/24 164/10 164/24 165/10 165/17 166/15 166/18 15 days [1] 80/23 15 minutes [1] 122/21 15-minute [3] 50/5 90/14 173/5 150 [1] 102/14 150,000 [1] 109/10 15th [1] 176/5 16 [1] 98/23 168 [1] 2/10 16th [6] 20/25 107/12 124/18 173/17 176/5 176/11 17 minutes [2] 89/1 192/6 17 years [1] 211/7 170 [1] 16/18 178 [1] 16/19 17th [5] 20/2 159/7 161/3 163/3 173/18 18 [1] 64/2 18-cv-3012-JFA [1] 1/5 1848 [1] 121/1 1884 [22] 95/18 95/24 96/1 96/4 96/6 96/7 96/9 96/11 96/23 96/25 99/13 100/14 107/17 113/4 119/24 134/19 135/22 137/7 137/18 150/11 151/10 165/8 19 [2] 64/1 184/10 19 seconds [2] 182/6 182/6 193 [1] 2/11 1997 [4] 156/21 157/21 158/7 165/21 19th [1] 156/24 1:00 [1] 90/11 1:17 p.m [1] 206/3 1:40 [3] 122/21 122/22 122/25	1st [5] 80/5 157/14 157/22 207/3 207/5 2 2 hours [1] 89/1 2,672,067-dollar [1] 131/5 2,994 [2] 100/23 103/4 20 [1] 62/18 20 percent [1] 131/3 200 [3] 38/11 138/13 162/8 200 milligrams [1] 114/24 2005 [3] 25/18 25/20 68/15 2006 [1] 26/3 2007 [9] 118/1 121/18 156/24 168/22 169/8 194/1 194/2 194/5 211/13 2008 [18] 26/3 26/4 49/8 76/3 76/6 76/19 118/1 157/14 157/14 157/16 158/9 158/19 159/20 166/3 166/5 166/8 166/17 169/10 2009 [30] 24/1 26/13 26/23 41/4 49/8 49/10 49/11 49/12 69/6 69/9 70/17 70/20 70/25 72/13 76/5 76/6 79/1 79/3 79/12 118/1 157/22 157/22 158/9 158/11 158/19 159/20 166/3 166/9 166/17 169/10 2010 [1] 167/19 2011 [2] 79/13 156/24 2012 [38] 27/5 35/5 35/11 39/9 40/20 40/23 41/1 54/21 54/22 54/25 55/1 55/10 55/23 57/9 68/17 69/8 69/9 69/13 69/16 70/17 70/20 70/25 72/13 76/7 76/9 76/12 79/1 79/12 79/18 93/23 121/18 168/22 197/5 198/23 199/15 199/22 203/10 212/8 2013 [49] 8/7 14/5 26/16 26/23 27/6 27/7 35/5 35/11 39/9 40/20 40/23 41/4 42/2 42/6 42/7 47/10 53/1 59/13 59/16 59/16 59/16 65/16 71/4 73/15 73/25 74/3 74/5 79/3 81/12 109/7 142/6 144/16 159/7 161/3 163/4	164/16 185/20 187/17 195/9 195/23 197/1 201/9 202/24 203/6 205/3 205/19 206/3 225/4 225/6 2014 [13] 8/9 44/8 48/13 48/14 51/5 51/5 51/11 56/10 59/25 71/4 156/6 156/18 181/13 2015 [3] 51/5 51/11 194/4 2020 [1] 16/19 2022 [1] 51/2 2023 [7] 1/6 24/2 49/12 68/20 76/19 107/12 227/12 20th [1] 142/6 210 [1] 2/12 21201 [1] 1/25 22 minutes [2] 87/20 191/25 220 [1] 162/8 23 [1] 2/3 23rd [6] 8/7 8/9 109/7 199/15 199/17 203/6 24 hours' [2] 11/10 12/1 24-hours' [1] 17/18 24th [1] 20/1 25 [2] 42/7 225/4 250 milligrams [1] 146/10 254 [1] 50/23 25th [2] 26/16 225/6 26 [2] 103/13 111/23 27 [1] 59/16 27,818 [2] 162/10 163/5 27818 [1] 163/12 28 [1] 227/6 28,725.92 [1] 129/16 28th [3] 6/6 6/10 156/18 29 [1] 59/16 29 seconds [1] 192/3 2:56 [1] 173/8 3 3,020 [2] 102/5 105/23 30 [2] 111/9 120/14 30 hours [4] 16/5 21/20 22/22 88/15 30 minutes [4] 87/16 87/21 192/2 192/3 30 seconds [1] 191/17 30-hour [1] 15/25 300 [3] 38/9 56/3 77/9 302 [4] 7/7 8/8 8/8 10/7 302s [2] 10/21 10/21	30th [1] 6/7 31 minutes [1] 182/4 31st [4] 4/9 93/23 157/14 157/22 32 [2] 85/19 88/6 35 years [1] 210/24 360 view [1] 215/20 37 [4] 129/18 154/19 167/9 167/10 39 [7] 99/18 102/25 103/24 104/12 108/11 134/16 136/21 39 seconds [1] 192/3 390 [1] 104/20 3:00 [1] 14/22 3:12 [1] 173/8 3rd [3] 156/24 168/22 206/3 4 4,200 [2] 158/1 158/19 4,260 [1] 166/7 4.5 million [1] 98/4 4.5-million-dollar-plus [1] 97/23 40 [2] 184/6 184/9 40 minutes [1] 218/8 400 [2] 38/9 39/22 42 [14] 101/6 104/8 116/3 116/14 116/25 127/19 127/22 128/1 142/4 159/2 161/2 161/24 162/3 163/4 47 [2] 131/25 132/13 4:00 [4] 14/22 219/16 219/24 222/4 4:00 tomorrow [1] 222/25 4:44 [1] 193/1 4th [2] 1/24 6/4 5 5 seconds [1] 182/5 5,400 [1] 158/19 5.46 [1] 131/1 50 milligrams [1] 138/13 50-milligram [1] 162/8 51 [1] 13/1 51 seconds [1] 192/6 53 [1] 56/5 58 seconds [1] 192/1 59 [3] 3/18 13/1 131/23 5:01 p.m [1] 193/2 5:30 [1] 192/19 5:30 p.m [1] 56/4 5:47 [1] 226/4 5th [5] 126/21 127/1 198/23 199/21 227/12	6 6,404 [2] 103/17 104/25 6,480 [2] 103/7 105/24 6.46 [1] 131/1 60 [1] 120/14 602 [1] 183/1 67 [4] 2/6 54/3 55/19 61/11 7 70 [11] 114/18 114/23 127/13 131/4 131/16 142/2 149/2 158/3 160/15 162/23 163/8 71 [3] 3/18 13/1 13/1 753 [1] 227/7 76 [4] 108/18 108/20 110/14 131/23 78 [1] 2/6 780 [2] 104/21 105/12 7th [3] 123/13 126/25 172/24 8 8,700 [1] 166/10 805 [1] 16/18 81 [1] 2/7 85 [5] 155/24 156/16 158/8 165/21 168/9 9 9,600 [7] 117/3 129/8 158/5 158/9 158/11 158/20 159/18 9,600-dollar [1] 129/15 92 [1] 2/8 95 [2] 212/22 213/3 96,000 [1] 167/15 96,000-dollar [3] 154/23 155/2 167/18 97 [2] 61/19 61/25 98 [11] 128/4 128/7 128/8 154/15 160/10 167/9 167/9 168/20 169/17 169/19 169/20 9:00 [2] 218/15 219/21 9:00 a.m [1] 222/2 9:03 [2] 1/7 3/1 9:30 [3] 22/24 218/13 218/15 9:30 is [1] 218/16 9:30 tomorrow [2] 218/17 226/1 A a.m [7] 1/7 3/1 50/9 50/10 90/17 90/18 222/2
--	--	--	--	--

A	207/10 208/4 208/13 208/21 210/5 210/7 212/25 214/17 215/22 216/24 218/20 222/7 222/20 223/16 224/11 225/5 above [2] 1/9 227/9 above-entitled [2] 1/9 227/9 abroad [1] 124/11 absence [1] 153/23 abysmal [1] 104/1 accent [1] 29/23 accept [1] 189/4 accepted [1] 180/13 access [4] 35/22 35/23 72/14 72/15 accidentally [2] 103/15 104/18 according [4] 71/22 88/6 121/4 129/14 account [16] 93/21 94/18 95/21 99/4 110/13 114/1 114/9 114/25 115/25 119/21 121/2 131/8 131/17 138/25 143/8 161/15 accountable [1] 9/2 accounted [5] 107/19 107/22 109/22 131/10 160/22 accounting [5] 105/22 109/12 109/18 115/17 146/3 accounts [3] 99/7 115/7 115/21 accuracy [1] 153/5 accurate [15] 47/3 47/13 73/24 74/5 103/8 139/18 140/21 141/12 142/9 164/11 165/10 194/13 203/25 214/19 217/10 accurately [3] 106/10 137/5 137/17 accused [1] 153/12 acquired [2] 10/15 225/1 acronym [1] 193/24 across [12] 100/11 100/13 109/14 118/19 119/8 130/19 130/25 131/11 138/16 146/7 169/3 169/6 acted [1] 6/19 action [1] 204/24 activity [1] 217/24 actual [10] 39/7 70/12 93/2 102/9 121/21 132/16 138/11 138/12	139/10 146/5 actually [52] 12/6 16/12 17/17 18/22 37/2 39/20 54/19 55/16 56/5 56/7 78/7 78/13 80/9 84/11 84/22 89/15 90/24 93/3 94/4 95/12 97/19 100/16 101/9 103/12 110/8 118/24 119/1 122/6 126/1 136/20 136/21 146/19 149/9 150/8 157/6 159/24 160/15 161/8 165/13 165/22 170/15 171/4 171/14 176/1 176/16 191/23 198/2 199/10 206/2 212/23 219/11 222/25 ADAP [2] 100/13 140/11 add [6] 87/8 105/20 158/17 166/11 171/16 171/19 added [2] 43/12 96/5 adding [2] 53/6 87/6 addition [2] 95/23 96/1 additional [12] 59/15 64/16 65/13 85/23 88/7 96/6 103/17 137/15 138/15 148/20 178/13 210/13 Additionally [1] 11/1 address [4] 30/2 161/10 161/11 175/14 adjourn [4] 123/12 126/16 172/10 218/10 Adjourned [1] 226/4 adjust [1] 171/15 adjusted [2] 99/23 146/14 adjustment [2] 163/18 171/25 adjustments [1] 100/7 administered [2] 133/18 140/24 admissibility [2] 3/18 224/14 admit [2] 11/16 168/15 admitted [7] 9/7 40/10 47/21 61/14 72/20 74/11 169/25 admitting [1] 13/2 adverse [2] 20/7 59/6 advise [1] 50/19 advised [1] 85/3 advisement [1] 21/16 affect [1] 144/20 affected [1] 78/14 affecting [1] 178/14	affects [1] 19/20 affidavit [47] 3/19 7/3 109/3 113/21 113/24 114/3 114/5 114/13 114/18 114/20 115/1 115/21 117/8 117/13 118/2 121/4 127/13 127/17 127/25 132/7 141/18 141/22 143/2 149/2 158/2 158/11 158/18 160/16 161/1 161/1 162/12 162/19 164/25 165/17 166/16 166/19 202/25 203/1 203/2 203/3 203/5 205/3 209/4 209/5 209/6 210/9 217/9 afford [1] 123/7 Afinitor [1] 59/15 afraid [7] 60/14 63/7 63/9 63/15 63/16 65/18 224/1 after [45] 4/13 4/22 5/20 6/9 10/15 15/14 21/25 22/22 25/19 26/5 43/13 43/14 45/3 45/20 55/23 56/4 58/13 76/15 79/15 79/16 80/23 101/20 124/3 125/24 158/11 170/7 174/24 175/12 175/17 191/21 191/22 195/23 197/8 197/9 201/12 202/23 207/8 214/10 219/6 219/7 219/17 221/23 222/11 225/1 225/6 after-acquired [2] 10/15 225/1 after-hours [1] 5/20 afternoon [7] 172/19 180/5 193/19 193/20 210/20 210/21 225/20 again [56] 7/18 7/21 10/1 10/2 10/12 12/1 12/19 13/1 14/23 15/23 16/6 16/9 18/8 18/10 21/21 22/11 22/15 24/4 25/23 28/16 30/20 32/24 36/12 37/21 39/12 40/19 44/11 44/23 51/16 57/5 57/19 59/1 65/5 83/24 85/7 91/6 91/19 99/9 112/13 113/13 118/23 130/13 135/21 137/17 138/2 139/1 140/14 144/11 144/24 145/9 146/3 147/22 165/22 175/22 179/3 188/17 against [25] 7/12	12/15 21/11 21/17 21/20 22/22 43/1 43/4 43/5 44/3 45/15 48/10 49/23 52/14 52/15 65/13 84/14 86/9 86/21 88/10 88/12 88/22 90/24 91/7 91/8 aged [2] 74/2 74/4 agent [28] 6/19 8/1 8/2 8/2 10/21 10/22 13/7 13/7 14/1 14/2 18/20 18/20 42/7 46/11 61/3 116/14 132/2 132/10 133/1 142/5 195/17 197/7 197/10 198/15 200/21 200/22 201/13 223/22 Agent Lating [6] 8/2 10/21 13/7 14/2 18/20 200/22 Agent Lating's [1] 46/11 Agent Maura [1] 195/17 Agent Mosley [11] 8/1 10/22 13/7 14/1 18/20 116/14 132/2 132/10 142/5 198/15 200/21 Agent Mosley's [1] 133/1 Agent Ryan [1] 223/22 agent/investigators [1] 201/13 agents [4] 7/25 14/5 52/25 195/7 ages [1] 67/23 aggregate [1] 146/6 aggregating [1] 109/13 ago [1] 221/15 agree [16] 6/25 7/4 11/3 24/15 49/25 86/7 87/23 102/8 108/17 113/21 118/18 143/3 145/14 147/25 182/8 208/8 agreed [4] 56/19 58/8 175/15 180/24 agreeing [2] 22/21 71/13 agreement [11] 54/4 56/12 56/20 57/6 57/18 59/2 60/3 60/7 60/21 61/2 106/19 agrees [1] 192/7 Ah [1] 18/4 ahead [52] 16/11 21/7 21/8 22/1 45/9 49/3 53/15 55/20 57/6 58/23
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A	84/14 86/22 87/9 95/14 98/17 100/13 119/19 134/9 144/12 146/22 147/8 162/17 171/22 171/25 174/19 175/13 179/1 181/9 188/10 197/18 199/11 altogether [1] 9/25 always [4] 17/5 49/15 176/20 202/6 am [5] 23/23 89/12 89/12 127/1 178/3 America [1] 1/14 American [4] 34/9 34/9 34/19 69/21 Americans [1] 34/11 amount [12] 59/17 93/11 104/18 104/19 130/11 135/9 135/12 144/18 146/6 146/8 167/12 224/18 amounts [1] 137/6 ample [1] 189/3 analyses [2] 94/16 98/3 analysis [45] 93/9 93/19 93/21 93/22 95/21 95/25 96/1 101/22 112/1 112/22 113/22 116/21 117/5 133/11 133/14 134/25 135/21 138/16 138/24 139/3 139/7 140/19 141/16 143/7 143/9 143/10 143/16 143/23 144/9 144/19 145/10 146/1 150/5 150/6 152/20 153/1 153/20 153/21 185/9 188/6 188/21 215/1 221/5 223/25 225/11 analytical [1] 69/1 analyzed [3] 152/25 153/4 157/1 analyzing [1] 93/13 ANDERSON [36] 1/10 6/20 8/18 23/21 26/14 28/22 30/8 31/4 32/16 34/8 35/10 36/9 36/21 38/6 39/16 41/20 42/5 42/24 44/23 45/16 66/4 67/16 69/4 71/6 73/21 103/8 124/25 128/10 159/25 162/21 164/3 175/24 177/12 181/5 210/22 225/16 angry [1] 63/5 ANNAPPAREDDY [79] 1/3 1/17 6/21 7/9 7/16 7/19 12/12 12/17 12/18	13/17 14/7 16/7 16/10 18/2 19/7 23/25 27/11 27/18 28/1 28/7 28/11 28/19 28/25 29/15 30/22 36/17 37/8 40/16 40/21 41/5 41/7 41/11 41/13 41/17 48/10 49/2 49/8 49/11 52/13 57/9 60/11 60/14 62/10 63/9 63/11 64/9 64/22 64/25 65/3 65/7 65/12 69/5 70/17 70/21 71/1 74/16 75/17 76/20 78/13 82/9 82/11 91/8 92/4 126/14 143/21 144/8 144/14 147/17 173/20 174/17 174/25 175/11 176/3 176/18 177/8 178/1 181/22 193/7 211/25 Annappareddy's [11] 18/13 30/17 48/14 49/13 76/22 78/7 90/25 93/16 97/13 97/24 119/7 announce [2] 123/6 123/10 another [16] 18/1 31/6 81/4 88/3 96/4 112/16 121/7 135/3 148/5 173/22 174/12 174/21 192/13 215/23 216/5 218/7 answer [29] 20/20 24/13 28/6 31/13 37/21 43/17 43/20 53/11 53/12 53/13 53/15 62/21 63/2 63/5 64/5 64/8 73/4 87/19 88/24 89/7 89/11 113/2 136/1 183/7 185/8 204/9 208/18 208/19 209/15 answered [6] 59/4 135/25 147/21 190/4 190/5 191/10 anticipate [1] 178/14 Anu [1] 79/16 any [99] 4/13 6/8 10/2 11/17 15/1 33/14 34/14 34/15 34/16 34/17 34/23 35/15 40/8 41/10 41/14 43/7 50/3 51/5 52/25 58/21 62/21 64/16 72/11 77/21 79/23 83/14 83/25 84/4 89/1 93/19 94/14 95/19 96/1 97/2 97/5 97/12 97/19 97/22 98/25 100/9 100/11 100/13 105/4 105/6 106/2 107/15 111/19 113/7	119/22 120/21 121/19 124/9 124/12 124/20 125/15 126/10 130/17 131/8 132/16 132/22 133/11 134/24 136/20 137/11 137/22 138/18 139/9 142/15 146/5 147/19 148/10 148/10 148/20 149/23 150/19 151/14 155/11 160/20 162/11 164/12 167/17 168/10 168/12 178/14 181/14 188/13 194/25 194/25 202/5 202/15 210/13 211/19 212/5 212/25 213/9 213/11 220/4 221/9 223/2 anybody [13] 10/16 20/21 27/13 36/17 41/2 56/22 123/14 156/2 170/11 170/19 173/2 177/19 212/3 anybody's [1] 11/9 anyone [2] 3/13 218/22 anything [20] 42/9 42/12 61/15 65/21 75/9 77/2 85/6 102/23 105/20 115/17 132/20 156/2 165/12 170/1 188/8 190/21 202/18 203/23 204/1 225/23 anyway [2] 3/11 88/15 anywhere [1] 89/2 apart [1] 147/15 apartment [1] 29/4 apologies [3] 3/16 91/21 182/2 apologize [12] 3/6 4/19 4/23 126/6 128/9 162/6 164/22 175/23 177/7 210/3 210/3 222/18 apparently [2] 11/7 170/19 appeal [4] 15/9 51/18 177/17 180/25 appear [4] 117/6 128/11 128/13 131/17 appears [5] 49/18 49/21 129/13 130/19 158/12 appellate [1] 181/9 appendix [1] 16/18 applicable [1] 105/3 application [1] 76/4 applied [4] 107/17 109/21 139/7 195/6 apply [2] 105/21 150/24	applying [2] 40/25 41/1 appreciate [4] 16/9 28/4 174/20 180/12 appropriate [6] 21/22 136/4 187/21 188/4 188/14 225/15 approximately [5] 76/2 86/15 108/18 200/13 201/9 April [5] 4/2 59/16 177/21 201/9 202/24 April 2013 [2] 201/9 202/24 April 29 [1] 59/16 are [114] 5/22 6/17 6/17 9/2 11/2 11/10 11/24 12/8 12/17 13/1 15/20 16/13 16/24 17/2 17/7 17/16 18/7 18/9 18/13 18/14 18/21 19/9 19/10 19/10 21/5 21/19 22/8 22/10 23/21 24/22 34/2 34/6 35/4 35/12 38/8 38/11 41/10 41/22 42/13 42/14 44/3 44/9 46/6 46/7 48/21 52/10 52/18 53/17 55/12 57/11 60/1 61/6 63/11 67/23 68/20 76/14 78/1 87/14 88/16 91/15 101/18 104/9 112/6 114/2 119/14 120/2 120/15 121/6 123/21 124/9 125/14 126/19 127/16 131/13 132/12 135/5 135/13 136/12 136/21 136/21 137/6 137/16 137/16 140/3 146/19 147/15 148/14 160/5 160/6 161/14 161/17 162/16 163/5 163/15 164/11 164/12 165/10 166/4 166/25 169/7 170/10 173/18 176/10 178/8 178/16 179/12 185/11 188/24 191/25 199/1 199/3 209/23 212/25 220/5 aren't [2] 89/20 135/6 argument [4] 9/9 9/24 11/12 186/21 arguments [1] 223/20 ARNOLD [25] 1/6 2/11 15/15 125/20 156/8 170/10 170/25 192/20 193/7 193/13 193/19 199/25 204/6 205/4 206/2 206/23 209/24 210/4 210/20 218/21
----------	---	---	--	---

<p>A</p> <p>ARNOLD... [5] 219/7 219/15 219/18 220/14 223/6</p> <p>around [12] 13/8 19/20 44/8 76/7 76/12 111/9 181/3 197/3 204/19 215/20 216/10 220/17</p> <p>arrange [1] 222/16</p> <p>arrangement [1] 29/10</p> <p>arrested [10] 26/16 26/17 42/2 42/6 42/8 42/10 45/20 53/1 65/16 66/5</p> <p>arresting [1] 42/14</p> <p>arrived [1] 55/23</p> <p>articulated [1] 174/4</p> <p>as [177] 3/8 12/14 15/2 15/3 15/23 16/20 16/20 18/8 22/6 22/6 22/7 24/1 24/7 24/14 24/15 27/5 29/12 29/12 30/21 31/3 31/3 31/18 31/19 33/11 34/4 35/10 37/13 38/23 38/24 39/3 41/10 44/4 45/24 46/5 47/23 49/24 50/21 51/2 52/18 54/3 57/16 58/7 60/15 62/20 63/22 67/5 72/20 73/17 73/25 79/20 80/24 81/2 82/2 83/4 83/9 83/12 85/13 86/4 87/21 87/22 89/14 89/18 90/5 91/16 94/18 96/2 97/14 97/14 97/19 98/16 99/3 99/7 100/10 104/25 105/16 107/5 113/16 114/23 118/17 119/24 120/12 120/13 121/7 123/11 123/11 124/1 124/5 124/5 127/21 127/25 128/22 129/17 131/25 135/22 137/3 138/4 139/18 139/18 139/19 139/20 139/21 139/21 143/8 143/16 143/22 144/8 144/19 145/8 145/22 145/24 150/19 152/7 152/7 152/9 152/9 152/11 152/11 152/12 152/12 152/13 152/13 152/14 152/14 152/15 152/15 153/7 153/7 153/8 153/18 153/18 154/11 156/7 156/7 171/8 171/8 173/25 174/3 174/3 174/10 174/13 176/10 176/22</p>	<p>176/22 178/3 178/3 179/9 179/25 179/25 180/24 181/19 183/7 183/10 183/24 185/19 186/10 186/10 187/17 187/17 194/12 194/20 196/18 200/25 201/8 201/18 201/25 202/13 209/8 209/19 210/9 212/24 212/24 214/4 214/23 218/6 220/12 220/13 223/23</p> <p>Asia [1] 12/15</p> <p>aside [4] 9/25 47/12 74/4 170/9</p> <p>ask [49] 10/22 24/2 24/11 24/12 28/19 34/7 36/5 37/8 37/11 47/24 48/25 48/25 50/14 60/17 60/19 61/5 66/10 67/14 68/7 71/1 71/11 72/7 73/2 73/3 74/14 78/14 79/25 82/23 83/24 86/9 90/7 97/10 106/5 113/13 114/17 122/8 133/4 138/2 139/17 147/17 155/8 155/13 155/16 187/6 206/22 209/14 212/24 219/7 220/22</p> <p>asked [68] 10/24 10/25 22/5 29/21 42/12 52/17 52/20 52/24 59/4 65/21 71/2 80/2 81/6 81/21 85/7 90/22 91/15 93/8 98/15 98/19 98/21 99/10 110/21 111/18 112/8 112/14 112/21 113/3 113/8 113/9 117/24 132/3 133/7 133/10 135/25 137/25 142/6 145/2 146/3 147/21 149/24 151/21 153/5 153/25 154/15 156/8 156/11 160/13 160/17 160/21 161/7 162/3 164/9 165/15 166/21 167/8 167/11 185/7 186/13 190/4 190/5 190/21 208/14 208/23 209/10 216/6 217/8 222/14</p> <p>asking [15] 42/8 58/4 83/16 112/11 112/15 123/19 125/24 137/9 169/3 187/21 191/5 207/3 208/21 222/20 224/3</p> <p>asks [1] 112/18</p> <p>assassinate [1] 19/8</p>	<p>assassination [1] 7/8</p> <p>assessment [5] 214/14 215/7 216/4 216/16 217/4</p> <p>assign [2] 80/8 83/7</p> <p>assigned [4] 202/21 207/2 212/12 213/19</p> <p>assignment [4] 92/17 92/18 98/16 212/1</p> <p>assist [1] 212/12</p> <p>assistance [10] 93/12 96/2 134/11 134/13 140/9 149/11 149/12 149/15 149/19 192/10</p> <p>Assistant [3] 101/14 116/20 158/25</p> <p>assisted [5] 201/17 201/17 214/10 217/19 217/22</p> <p>associated [2] 130/12 134/3</p> <p>assume [6] 3/4 50/16 113/3 145/3 151/13 185/3</p> <p>Assumes [1] 149/25</p> <p>assuming [3] 125/7 147/7 170/15</p> <p>assumption [3] 146/4 146/25 147/14</p> <p>assumptions [5] 112/21 113/7 139/2 139/3 139/5</p> <p>astute [1] 16/10</p> <p>astutely [1] 174/11</p> <p>attached [5] 60/24 119/19 132/6 135/5 206/10</p> <p>attachment [2] 206/5 208/2</p> <p>attend [1] 6/5</p> <p>attended [1] 200/2</p> <p>attention [4] 31/2 36/20 94/13 173/14</p> <p>attorney [11] 50/15 53/22 54/8 97/3 101/14 116/20 158/25 159/1 196/4 208/22 215/8</p> <p>Attorney's [2] 97/3 216/19</p> <p>attorneys [1] 195/14</p> <p>attributed [1] 181/2</p> <p>August [18] 123/13 123/13 124/1 124/8 124/10 124/18 126/18 126/21 172/24 172/24 173/23 174/14 194/2 194/4 194/5 199/15 199/17 225/9</p> <p>August 14th [1] 172/24</p>	<p>August 23rd [2] 199/15 199/17</p> <p>August 5th [1] 126/21</p> <p>August 7th [1] 172/24</p> <p>authenticated [1] 13/2</p> <p>authenticity [1] 155/6</p> <p>authoring [1] 187/1</p> <p>auto [1] 211/10</p> <p>available [17] 6/8 10/18 20/14 124/1 124/13 124/14 127/4 139/20 142/18 177/20 177/21 179/25 209/12 219/20 221/17 221/21 221/22</p> <p>average [4] 129/3 129/4 129/5 130/11</p> <p>avoid [3] 41/25 181/9 220/4</p> <p>aware [10] 3/8 41/10 50/22 51/3 58/13 63/11 74/24 91/1 181/13 202/23</p> <p>away [2] 167/1 172/3</p> <p>awful [1] 102/16</p> <p>B</p> <p>Bachelor [4] 25/15 25/16 25/19 68/10</p> <p>Bachelor's [1] 68/13</p> <p>back [104] 4/12 4/13 4/15 5/15 6/9 6/11 8/3 14/5 15/20 15/22 18/10 19/22 19/24 20/19 20/19 21/1 26/21 30/1 37/21 40/17 40/22 41/4 42/11 44/6 45/1 47/10 51/2 51/4 55/19 56/10 57/5 65/18 66/6 68/10 73/25 76/17 84/10 89/23 90/4 91/9 91/12 91/14 92/2 101/9 103/20 113/14 113/16 115/16 115/22 118/14 118/16 118/17 122/21 123/12 123/23 123/25 124/8 127/12 127/19 131/4 134/16 137/1 137/3 138/3 138/4 143/11 145/6 145/8 145/21 145/22 149/2 149/20 150/21 151/23 158/2 158/23 159/2 160/9 160/9 161/8 162/18 162/20 165/21 166/15 168/19 171/10 172/24 173/3 173/23 178/20 185/19 188/16 196/9 201/7 202/17 203/8 204/14 209/18</p>	<p>209/19 218/13 220/16 220/23 222/9 224/11</p> <p>background [2] 67/15 92/16</p> <p>backward [1] 8/7</p> <p>backwards [1] 178/24</p> <p>bad [5] 7/9 41/21 44/5 75/12 78/3</p> <p>badgering [2] 53/14 120/4</p> <p>bag [4] 31/7 31/12 37/16 37/18</p> <p>bags [2] 34/5 80/7</p> <p>bail [1] 42/18</p> <p>ballpark [2] 86/15 87/13</p> <p>Baltimore [7] 1/6 1/25 4/7 66/6 123/13 210/23 214/15</p> <p>bank [3] 5/9 5/10 5/11</p> <p>based [16] 8/13 12/20 97/16 98/3 98/8 110/4 117/5 117/25 129/16 146/5 146/6 150/25 154/23 172/25 187/22 219/23</p> <p>basic [1] 5/6</p> <p>basically [9] 7/13 20/11 27/14 52/22 159/10 164/6 176/14 178/24 187/18</p> <p>basis [8] 12/2 35/15 117/15 136/23 138/23 145/10 145/17 191/3</p> <p>Bates [1] 121/21</p> <p>bathroom [3] 29/8 29/11 29/17</p> <p>BBH [2] 31/10 38/14</p> <p>be [186] 3/2 3/8 5/3 5/13 6/6 8/6 9/2 9/9 10/10 11/5 11/13 12/5 12/21 15/5 15/6 16/13 16/15 16/20 17/9 17/21 17/24 18/8 22/8 22/12 22/15 22/18 22/20 24/12 24/13 27/22 31/15 32/8 32/24 34/15 35/4 36/23 38/7 38/9 39/1 40/4 42/19 50/13 50/23 52/17 53/6 59/7 61/18 65/8 66/23 71/3 73/3 73/5 80/9 84/12 86/25 87/13 89/19 93/2 95/8 99/12 102/12 103/17 103/20 103/24 104/23 106/5 106/12 106/15 107/19 107/21 107/22 108/16 110/4 114/11 116/5 117/6 119/25 120/8 120/25</p>
---	--	---	---	---

B	156/5 164/12 165/7 173/2 176/7 176/25 177/20 180/24 181/2 184/23 187/4 188/8 207/2 207/9 208/15 208/23 209/10 210/8 212/11 213/15 220/11 224/25 225/9 225/18 becoming [4] 203/10 203/12 208/9 210/5 bed [5] 30/6 30/11 30/13 30/19 30/24 been [70] 9/24 10/2 10/5 10/19 11/6 11/11 12/12 13/5 13/25 16/20 16/23 16/25 17/5 18/18 19/8 19/14 22/11 22/17 28/18 30/13 72/19 73/17 80/22 88/15 104/25 105/3 105/12 109/23 123/24 132/8 142/8 142/23 151/7 152/16 156/6 172/4 173/16 173/20 173/25 174/3 174/7 174/8 174/15 178/9 178/23 180/10 180/24 181/6 181/13 183/7 190/4 190/5 192/8 192/11 192/11 194/25 195/1 195/13 195/20 197/13 201/24 202/15 202/20 202/20 208/7 208/21 213/19 214/10 220/23 225/13 before [44] 1/10 5/6 7/1 9/19 12/23 15/16 19/13 47/25 48/25 50/14 52/25 53/2 67/18 74/14 81/11 86/14 95/12 100/25 101/12 105/22 105/24 107/2 118/2 132/10 149/3 158/24 159/4 163/18 167/19 170/5 172/10 173/12 174/11 175/17 176/18 187/20 197/12 200/21 205/3 211/4 215/14 216/8 216/14 216/20 begging [1] 42/10 begin [2] 26/11 50/14 beginning [4] 79/18 115/11 143/11 144/13 begins [4] 55/20 115/7 115/14 169/8 behalf [4] 1/12 1/14 93/15 180/14 behavior [1] 69/22 behind [3] 199/1 199/3	199/4 being [31] 4/20 13/6 13/6 19/10 28/20 39/11 39/18 47/12 51/17 57/2 57/14 77/1 89/21 91/8 132/2 142/4 142/5 144/4 167/10 167/10 167/11 173/22 177/11 187/14 188/24 203/6 203/15 205/6 205/15 214/1 224/12 believe [44] 11/4 13/8 25/18 68/16 86/20 87/21 92/19 94/6 107/11 107/23 109/4 109/20 113/23 116/15 118/1 118/18 128/3 128/6 130/13 130/16 132/20 137/5 137/11 142/1 146/21 148/15 158/23 159/2 161/7 162/3 170/14 172/16 178/22 179/8 179/17 184/6 194/3 203/21 203/25 219/5 222/4 223/8 223/9 223/13 believed [2] 12/21 13/9 below [2] 206/13 206/21 bench [2] 1/9 16/11 bending [1] 178/24 bene [4] 85/14 107/5 107/11 172/14 benefit [1] 75/13 Benton [1] 24/19 best [6] 19/25 24/13 142/25 162/21 180/8 194/12 better [3] 29/6 29/7 29/9 between [11] 34/18 45/18 94/14 94/16 95/24 112/5 132/17 132/23 134/23 139/6 176/2 beyond [6] 65/20 111/20 118/19 119/12 132/19 190/20 biased [1] 12/15 big [9] 15/12 15/19 39/25 154/14 154/15 195/11 196/3 215/25 216/21 bill [11] 18/4 31/5 31/17 31/19 55/4 55/9 55/13 59/21 59/21 79/21 222/13 Bill Fassett [1] 18/4 billed [13] 31/4 55/17	55/25 56/16 57/2 57/14 58/12 58/15 58/19 59/19 96/24 117/25 120/12 billing [5] 56/16 57/10 58/1 94/25 95/4 billings [7] 94/22 95/4 95/7 96/12 98/10 153/1 153/8 billions [1] 157/1 bin [7] 32/9 37/18 37/22 37/25 38/3 39/13 39/20 binder [7] 103/22 118/25 155/24 162/17 162/20 199/7 199/8 binders [2] 198/7 217/20 bins [18] 31/9 31/9 31/11 31/12 32/12 37/11 37/12 37/14 37/19 38/6 38/10 38/11 38/17 38/19 39/9 39/11 40/3 80/4 bit [18] 4/20 12/14 29/22 31/14 47/12 73/15 74/2 74/4 91/17 92/22 139/13 143/22 200/9 210/23 217/21 219/6 219/13 224/3 black [1] 198/10 Blame [1] 124/25 Blomquist [4] 178/13 220/23 221/2 221/20 blow [1] 59/6 blurry [1] 54/5 body [1] 69/23 bog [1] 225/14 boiler [1] 188/11 boilerplate [1] 188/11 Bon [4] 31/10 37/15 37/16 38/13 book [2] 5/14 198/16 born [1] 210/22 boss [1] 77/18 both [24] 4/3 8/4 9/23 14/23 15/25 18/16 18/16 85/14 86/7 123/7 126/19 155/16 156/7 168/23 170/23 171/9 171/21 171/23 175/10 178/19 178/19 178/21 180/14 188/4 bottle [1] 120/13 bottom [3] 58/24 59/11 102/24 box [2] 193/10 225/9 branch [1] 27/3 brand [1] 29/16 breadth [1] 19/22	break [18] 50/3 86/8 88/20 90/12 109/10 122/16 123/4 128/11 158/24 164/20 171/23 172/19 172/20 172/22 174/20 177/16 191/21 191/22 breakdown [5] 156/6 157/4 172/2 172/8 182/3 breakdowns [1] 87/24 Bredar [5] 20/13 21/2 123/5 172/21 174/6 Brian [1] 171/13 brief [10] 4/20 4/22 4/22 7/14 9/9 176/6 179/3 185/14 213/14 218/11 briefed [2] 181/18 181/18 briefing [5] 4/3 4/4 10/3 10/15 10/25 briefly [11] 9/12 74/15 95/11 107/25 126/7 167/23 193/6 203/8 204/14 212/23 222/7 briefs [4] 3/17 3/21 9/24 10/14 bring [20] 5/16 9/3 10/10 13/16 18/10 44/3 45/15 45/18 65/12 66/11 88/3 103/20 118/14 150/21 151/23 173/13 180/3 219/7 225/19 225/21 broke [1] 128/4 brought [5] 5/24 8/21 30/10 43/1 212/13 bug [1] 30/6 bugs [5] 30/11 30/11 30/13 30/19 30/24 build [1] 220/19 building [5] 3/3 5/15 5/18 5/20 29/17 bullet [1] 119/6 bumped [1] 173/3 bunch [2] 13/13 142/12 burden [3] 16/2 16/3 16/4 business [5] 52/22 147/18 148/2 148/4 151/11 busy [3] 32/11 34/3 38/8
C			cabined [2] 8/6 8/16 calculate [2] 153/13 153/15	

C	91/14 93/5 94/4 94/9 95/10 103/20 106/13 106/16 113/2 113/13 113/14 116/7 118/5 118/18 118/25 119/2 120/8 123/11 125/6 126/8 128/18 136/24 137/1 137/22 138/2 139/21 141/24 142/20 143/8 145/5 145/6 145/23 146/9 157/1 158/7 158/13 159/5 160/15 162/19 162/20 163/8 163/9 163/10 167/3 168/2 170/6 170/14 171/2 171/19 171/25 174/3 174/21 174/23 176/1 176/10 176/25 177/14 179/4 179/13 180/9 180/13 180/15 180/19 181/3 182/21 183/23 184/4 185/4 185/14 186/10 188/4 188/16 191/20 191/21 192/13 196/2 196/13 198/14 200/14 201/6 203/19 203/23 204/1 204/1 204/3 205/24 208/1 208/18 219/21 220/3 220/13 220/13 222/20 223/16 225/8 225/12	capsules [3] 105/16 160/19 161/16 caption [1] 62/3 card [6] 5/17 5/18 40/24 40/25 41/1 218/2 Cards [1] 40/23 care [12] 25/3 25/4 62/25 77/6 77/6 77/20 83/6 86/22 140/12 140/24 141/1 222/16 carefully [2] 94/7 209/14 CareMerica [3] 27/7 27/8 58/18 cares [2] 75/20 80/4 Carolina [7] 61/1 140/10 147/9 147/12 147/20 148/3 151/1 carried [1] 130/1 case [153] 4/14 5/3 5/4 5/6 5/8 5/11 5/16 5/23 5/24 6/23 6/24 8/6 8/11 8/14 8/17 10/4 10/16 11/4 11/16 12/21 13/12 13/24 14/25 16/1 16/1 16/5 16/14 16/17 16/19 16/22 17/3 17/4 17/8 18/18 19/1 20/9 28/18 32/12 34/4 41/15 43/10 44/9 44/12 45/24 48/9 48/14 48/15 48/17 50/23 52/11 52/12 52/14 52/17 53/3 53/7 57/12 61/3 61/21 65/16 78/14 88/18 90/25 91/7 92/18 92/19 92/19 93/4 93/7 93/8 93/16 95/14 97/5 97/6 97/13 98/4 98/15 98/17 98/19 98/22 109/18 110/1 110/4 110/9 111/8 112/22 113/8 119/5 123/8 123/11 124/16 124/21 124/22 124/24 125/1 126/4 128/20 132/17 134/22 135/6 138/23 138/23 139/1 139/1 140/17 141/3 141/16 142/11 152/9 152/12 156/12 173/1 173/2 173/25 174/5 174/13 174/21 175/25 176/24 177/9 177/17 178/9 180/20 181/12 185/10 186/13 186/14 192/10 196/2 196/15 197/5 197/9 197/16 199/6 200/24 207/1 208/5 208/9 212/1 212/7 213/18 213/22	214/7 214/23 215/9 215/15 215/17 215/24 215/25 216/1 216/11 217/1 217/1 224/8 cases [4] 13/13 27/24 174/13 215/11 cashier [4] 34/12 80/3 80/3 80/6 catch [1] 166/1 Cathy [2] 142/6 215/5 causation [1] 224/15 cause [5] 6/18 7/3 19/1 156/3 223/20 caused [3] 150/10 150/12 164/14 certain [6] 4/7 17/2 21/2 27/24 37/22 86/10 certainly [13] 6/17 9/2 10/1 12/13 13/24 18/2 87/6 91/5 106/16 108/1 118/6 177/5 196/2 certainty [1] 137/21 CERTIFICATE [1] 226/6 Certified [1] 227/4 certify [1] 227/6 chance [3] 5/6 45/2 171/5 change [4] 126/10 142/20 142/22 225/17 changed [1] 130/15 changing [1] 217/11 character [25] 7/8 7/12 7/25 11/21 12/17 13/19 13/22 13/22 14/23 18/8 18/14 19/6 19/7 19/8 49/13 51/25 76/23 181/16 219/15 222/1 222/12 222/21 223/6 223/14 225/17 character-type [1] 51/25 characterization [1] 47/6 characterize [1] 29/13 charge [6] 31/22 33/5 42/13 44/13 74/25 109/17 charged [7] 52/13 53/7 53/25 74/22 81/12 172/3 172/4 charges [15] 42/25 43/4 43/5 43/12 44/3 45/15 45/17 45/18 53/6 65/13 75/5 75/7 75/10 90/24 90/25 chart [8] 106/18 106/21 108/10 108/12 129/9 134/16 137/10 148/14	chase [3] 96/20 101/13 159/11 check [2] 115/22 162/14 chemist [2] 24/8 69/1 chess [1] 171/8 chief [12] 5/5 5/11 5/24 16/1 20/13 21/2 123/5 126/4 175/25 177/9 180/20 181/12 childcare [6] 12/5 14/10 14/15 14/24 19/18 25/8 choice [3] 4/8 123/10 123/17 choose [1] 29/4 chopping [1] 176/24 Christmastime [1] 55/11 chunk [1] 221/10 circle [1] 203/8 circuit [5] 6/5 16/17 16/19 177/18 180/19 circumstances [1] 148/8 cited [4] 13/13 16/17 16/17 57/17 City [1] 214/15 civil [5] 1/4 85/19 101/14 111/22 158/25 claim [8] 32/12 34/3 59/15 80/6 93/11 134/25 150/10 165/9 claims [38] 56/2 56/3 59/17 93/8 96/1 96/10 96/15 96/16 96/17 96/22 96/22 96/24 100/14 102/24 103/8 103/9 110/25 119/8 119/22 133/18 135/13 139/25 140/2 140/3 140/21 140/21 141/4 141/18 141/23 142/15 142/16 142/23 150/13 157/1 163/19 163/21 164/13 165/4 clarified [1] 105/19 clarify [4] 126/12 155/20 155/21 184/1 clarity [1] 123/21 class [1] 12/8 classic [1] 19/4 cleaned [5] 106/12 106/13 106/15 106/18 106/22 clear [21] 7/5 8/17 10/3 12/2 14/7 22/5 22/15 31/15 32/24 35/4 96/8 99/12 107/21 130/20 153/17 155/12
----------	--	---	---	--

C	25/8 26/21 43/22 52/17 52/20 58/6 68/1 68/2 68/3 91/12 122/6 122/21 123/12 123/25 124/7 158/23 161/21 202/6 219/16 219/19 222/9 222/14 comes [6] 27/13 34/14 78/13 179/11 223/21 223/25 coming [4] 6/3 6/4 172/24 219/16 comment [3] 123/19 180/17 188/24 comments [1] 224/11 commercial [2] 110/3 141/16 commit [2] 41/5 70/18 committed [1] 43/7 communicate [2] 180/9 202/10 communicated [1] 202/16 communication [6] 195/12 196/7 196/14 196/22 202/21 205/19 communications [3] 112/5 112/9 195/13 comp [1] 211/10 companies [2] 56/4 57/11 company [9] 24/3 24/4 24/7 40/25 69/2 133/19 134/4 211/8 211/9 compare [2] 96/23 135/12 compared [1] 95/9 comparing [2] 96/14 217/5 comparison [1] 33/24 compartmentalize [1] 176/25 compilation [1] 91/25 complain [2] 30/12 57/1 complained [1] 57/10 complaining [1] 57/14 complete [4] 85/25 116/21 118/4 141/13 completed [2] 195/1 202/15 completely [5] 10/11 19/12 69/24 71/25 72/2 completeness [4] 85/22 88/7 88/8 88/11 compound [1] 164/18 comprehensive [2] 61/2 136/15 comprehensively [2] 111/11 111/13	computer [2] 1/22 5/17 Computer-aided [1] 1/22 computerized [1] 56/1 concern [6] 6/14 6/15 6/20 30/18 177/8 177/9 concerned [6] 5/22 19/16 28/8 30/22 91/2 91/4 concerns [1] 133/11 concise [1] 214/19 conclude [1] 123/14 concluded [1] 58/9 conclusion [1] 145/24 condition [2] 44/5 75/12 conduct [1] 17/19 confer [3] 106/18 107/24 167/23 Conference [2] 6/5 227/10 conferred [1] 123/5 conferring [4] 49/4 74/19 167/25 223/4 confident [1] 136/20 confirm [5] 61/5 122/11 126/24 128/11 170/15 confirmed [1] 174/6 confirming [1] 161/5 conflict [2] 124/21 174/16 conformance [1] 227/10 confusing [1] 106/11 connect [1] 161/24 consider [1] 45/1 considered [3] 44/6 53/16 149/9 considering [2] 44/9 53/7 consistent [4] 100/14 136/5 139/7 221/7 consolidated [1] 94/18 consolidating [1] 159/9 constant [1] 95/6 consult [3] 18/3 49/1 74/15 consumed [1] 87/13 cont [3] 2/8 2/8 92/10 contact [1] 26/6 contain [2] 213/4 224/7 contains [1] 141/22 contentious [1] 178/9 contested [1] 9/21 context [2] 64/3	225/14 continue [1] 185/23 CONTINUED [1] 1/9 continuously [2] 66/9 77/12 contract [1] 32/20 control [6] 24/10 65/7 119/1 193/22 211/13 213/10 conversation [3] 204/10 205/8 205/13 conversations [2] 195/19 196/5 convey [2] 179/24 180/11 conviction [1] 91/8 cooperating [1] 203/13 copied [1] 207/5 copies [1] 3/13 copy [6] 54/4 122/6 128/5 212/24 212/25 213/1 copying [1] 148/13 core [2] 201/12 201/22 correct [216] 5/7 25/9 26/20 26/24 28/9 28/10 29/19 31/20 31/21 32/5 32/18 32/19 32/22 32/23 33/1 33/2 33/3 33/6 33/7 33/9 33/10 35/3 35/19 36/16 37/4 37/24 38/1 38/4 38/21 40/1 41/18 44/13 44/14 44/16 44/18 44/19 44/21 48/1 48/4 48/5 48/8 53/1 53/4 54/9 54/10 54/16 54/17 54/19 57/23 58/20 60/4 60/5 60/9 60/10 61/6 62/10 62/12 62/14 65/17 69/18 72/3 72/5 81/12 81/13 81/25 82/7 82/11 82/15 82/17 82/18 82/24 82/25 88/11 93/17 93/18 93/24 94/2 94/23 95/5 95/16 96/6 96/11 98/18 99/11 99/15 99/22 99/23 102/11 103/2 103/11 104/6 104/10 105/17 105/25 107/3 107/6 107/8 108/12 108/13 108/15 108/18 108/19 108/25 109/3 110/5 113/22 113/25 114/3 115/1 115/25 116/1 116/17 116/18 116/22 116/23 119/19 120/23 121/15 128/13	128/20 129/11 132/25 133/3 133/19 134/8 134/11 134/12 134/14 134/15 134/17 134/18 134/21 134/24 135/3 135/10 135/11 135/15 136/13 136/21 137/11 137/14 138/22 139/6 139/10 139/20 139/24 140/1 140/4 140/5 140/7 140/8 140/10 140/11 140/13 140/14 140/18 140/25 141/6 141/10 141/11 141/14 141/15 141/19 141/24 142/11 142/20 143/5 143/9 143/18 143/23 144/21 146/5 146/17 146/18 146/21 146/23 146/24 147/2 147/3 147/9 147/10 149/10 149/17 149/21 151/20 152/1 152/3 152/15 153/3 153/13 153/16 154/2 154/6 154/8 154/13 155/1 158/19 159/15 159/22 163/6 163/17 163/20 165/2 165/5 165/10 165/11 184/11 193/22 194/14 203/16 204/16 205/16 207/21 219/5 223/9 227/7 corrected [2] 102/17 103/25 correcting [1] 166/24 corrections [2] 105/21 137/4 correctly [7] 49/7 89/17 96/8 127/15 170/22 174/11 219/21 correspondence [1] 132/16 corroborate [1] 217/12 could [81] 4/7 7/22 13/25 14/13 14/18 15/3 15/16 23/5 23/9 25/8 26/14 50/2 55/19 57/6 65/1 66/24 67/3 78/24 80/1 86/7 93/1 96/16 99/19 101/6 101/7 101/8 107/19 107/22 110/14 110/19 110/20 110/25 111/2 111/10 111/12 111/14 116/2 117/18 118/16 121/2 121/3 127/9 133/24 135/8 135/8 135/12 136/14 136/16 138/3
----------	---	---	--	---

<p>C</p> <p>could... [32] 142/10 142/21 142/24 143/16 143/17 144/7 148/4 149/5 152/18 153/11 153/19 153/20 155/24 156/5 156/8 156/11 169/12 175/4 175/5 175/19 188/15 193/11 198/13 200/9 208/16 209/17 220/25 222/10 222/16 222/17 222/24 223/19</p> <p>couldn't [4] 15/1 111/1 111/15 151/21</p> <p>counsel [34] 3/13 15/17 18/3 46/7 46/15 46/16 49/1 49/4 59/7 74/15 74/19 85/15 86/17 89/6 112/6 115/9 116/3 121/21 122/14 123/15 125/4 139/11 153/12 154/22 167/14 167/25 174/4 174/4 174/12 175/15 178/2 181/24 207/13 223/4</p> <p>counsel's [1] 180/17</p> <p>count [24] 21/11 21/17 21/19 43/13 49/22 49/24 86/9 86/11 88/9 88/12 88/22 93/20 95/20 95/25 98/9 101/15 101/20 102/6 102/23 135/8 153/14 161/2 161/12 164/25</p> <p>counted [9] 86/21 93/25 94/22 98/10 104/9 105/15 159/12 163/5 163/16</p> <p>counter [4] 6/16 6/17 89/20 192/5</p> <p>counter-designations [1] 192/5</p> <p>counting [31] 93/10 95/3 95/23 99/1 99/3 101/23 102/9 103/6 103/6 107/18 107/21 107/22 107/23 110/5 113/5 118/19 119/8 119/12 119/17 120/2 120/11 120/13 120/15 121/3 136/5 141/7 150/20 150/23 151/4 161/10 161/15</p> <p>country [3] 68/1 68/3 178/25</p> <p>counts [2] 22/22 84/14</p> <p>couple [14] 21/6 44/4 50/21 52/19 111/7 111/10 157/2 175/9</p>	<p>201/16 214/8 214/11 215/9 218/2 221/10</p> <p>course [5] 18/4 30/21 68/22 125/21 212/16</p> <p>court [43] 1/1 3/8 4/22 7/6 8/12 8/14 8/16 9/1 16/17 16/19 19/25 22/15 24/14 25/1 25/8 27/10 42/15 50/7 50/11 50/22 51/3 63/13 73/5 85/17 86/21 90/15 90/19 90/22 90/23 96/19 113/14 122/23 123/2 123/8 173/6 173/10 173/18 177/19 192/24 193/3 209/17 226/2 227/5</p> <p>Court's [9] 6/15 10/3 15/23 49/1 51/22 74/15 157/9 167/22 173/14</p> <p>courtroom [6] 50/15 61/4 116/13 132/2 142/5 171/9</p> <p>cover [14] 39/14 39/15 39/17 39/18 61/25 89/15 132/18 155/25 162/18 165/13 184/7 186/23 198/10 199/8</p> <p>covered [2] 112/6 152/25</p> <p>COVID [1] 174/8</p> <p>Craig [3] 178/13 220/23 221/20</p> <p>Craig Blomquist [1] 220/23</p> <p>created [2] 159/8 171/13</p> <p>creates [1] 16/12</p> <p>credible [2] 13/6 14/3</p> <p>crime [6] 43/7 53/25 74/22 74/25 81/12 211/19</p> <p>crimes [1] 51/4</p> <p>criminal [51] 20/6 48/15 51/11 60/8 61/20 61/21 63/13 63/24 65/13 92/18 92/19 93/7 93/8 93/16 97/5 97/6 97/13 97/17 98/3 98/14 98/17 98/22 99/3 99/7 100/5 100/6 110/1 110/3 110/9 119/5 119/20 124/24 133/15 133/17 134/22 134/25 138/14 139/8 140/5 140/8 140/11 140/14 141/3 141/4 141/16 144/15 152/9 211/18 212/1 212/7 216/18</p> <p>critical [1] 35/12</p>	<p>critically [3] 35/16 55/14 56/8</p> <p>cross [30] 2/4 2/6 2/9 2/12 49/24 50/1 50/14 51/13 52/4 59/1 65/22 78/19 78/21 106/11 106/16 108/5 108/7 112/3 118/10 160/13 162/4 164/10 167/8 168/6 207/15 207/17 210/2 210/17 224/1 224/6</p> <p>cross-examination [14] 49/24 50/1 51/13 52/4 59/1 65/22 78/19 78/21 108/5 108/7 118/10 160/13 168/6 210/17</p> <p>cross-examining [1] 224/1</p> <p>crosses [1] 223/12</p> <p>CRR [2] 1/23 227/16</p> <p>cry [1] 66/12</p> <p>crying [2] 66/9 78/2</p> <p>crystal [2] 7/5 22/4</p> <p>current [1] 184/1</p> <p>currently [4] 17/13 24/18 68/20 210/24</p> <p>curse [7] 62/14 62/16 63/3 63/3 63/3 63/6 63/10</p> <p>customer [3] 27/12 36/24 36/25</p> <p>customers [4] 27/11 27/16 38/4 39/23</p> <p>customs [1] 179/21</p> <p>cut [5] 86/8 96/20 101/13 110/15 159/11</p> <p>cutting [1] 148/13</p> <p>cv [1] 1/5</p> <p>D</p> <p>D.C [13] 42/17 103/16 103/17 104/19 104/25 105/8 134/10 134/13 140/4 140/9 149/11 149/15 149/19</p> <p>dad [10] 44/7 44/10 44/10 45/1 45/2 45/4 45/4 45/13 53/17 76/15</p> <p>damage [1] 9/10</p> <p>damages [1] 135/13</p> <p>danger [1] 27/23</p> <p>data [31] 93/9 101/15 104/15 104/15 104/18 105/17 109/13 118/1 119/9 129/3 129/6 134/3 134/5 134/6 136/3 136/8 139/10 141/14 142/9 143/17</p>	<p>146/5 148/17 149/4 152/2 152/4 152/17 153/11 153/15 153/18 153/24 169/10</p> <p>dataset [5] 107/20 146/8 151/6 164/15 165/9</p> <p>datasets [1] 150/22</p> <p>date [24] 4/2 4/2 5/14 21/21 93/22 93/22 107/13 121/17 123/22 124/12 143/9 143/10 143/10 143/23 144/9 156/17 156/22 156/23 157/12 157/20 168/20 169/8 197/2 199/21</p> <p>dated [2] 198/23 227/12</p> <p>dates [2] 78/24 124/9</p> <p>daughter [1] 67/24</p> <p>day [33] 1/3 15/1 16/2 16/4 25/7 30/15 38/8 38/9 38/11 38/12 38/15 39/25 40/1 52/22 68/23 77/23 90/1 92/15 94/24 125/23 175/6 175/11 176/3 212/14 218/10 219/9 219/10 219/18 222/4 223/15 223/17 225/13 227/12</p> <p>days [27] 4/7 5/13 5/14 16/23 20/19 20/24 21/1 21/3 38/10 38/10 38/16 38/19 39/22 40/3 42/16 42/18 42/19 44/25 65/10 66/8 66/9 80/18 80/20 80/23 124/1 224/1 224/5</p> <p>DC [2] 93/12 140/11</p> <p>de [4] 85/14 107/5 107/11 172/14</p> <p>deal [1] 118/11</p> <p>debate [1] 189/3</p> <p>debating [1] 21/5</p> <p>December [5] 51/2 52/18 76/15 157/14 157/22</p> <p>December 31st [2] 157/14 157/22</p> <p>December 5 [1] 51/2</p> <p>decide [4] 10/12 21/24 22/22 64/25</p> <p>decided [1] 172/23</p> <p>decision [1] 3/21</p> <p>declaration [5] 50/22 50/25 51/2 52/18 93/11</p> <p>decrease [1] 142/17</p> <p>decreasing [2] 142/25 143/18</p> <p>deep [1] 19/22</p>	<p>defendant [5] 1/14 5/19 5/24 11/22 61/5</p> <p>Defendant's [2] 5/11 182/5</p> <p>defendants [2] 1/7 57/8</p> <p>defender [1] 45/23</p> <p>defense [16] 3/24 6/16 7/8 8/12 16/3 19/8 54/3 55/19 61/25 128/8 129/17 142/4 168/20 169/20 212/22 213/3</p> <p>Defense 67 [1] 54/3</p> <p>Defense Exhibit 98 [1] 128/8</p> <p>defense's [1] 6/20</p> <p>definitely [2] 30/25 216/10</p> <p>degree [5] 25/14 25/16 25/19 25/23 137/20</p> <p>DeGroff [5] 186/25 187/5 187/11 187/13 187/14</p> <p>Delaware [2] 68/12 68/19</p> <p>delay [2] 21/3 223/20</p> <p>delayed [1] 4/9</p> <p>delivered [2] 18/22 18/24</p> <p>deliveries [2] 31/9 37/20</p> <p>delivery [11] 34/12 36/21 36/22 36/23 36/25 37/1 37/2 37/5 37/9 37/11 37/12</p> <p>demonstrate [1] 186/15</p> <p>Dennis [11] 7/23 12/13 13/5 14/1 14/4 197/24 198/4 198/25 199/19 200/7 204/14</p> <p>Department [1] 214/16</p> <p>depend [3] 138/23 144/3 148/8</p> <p>Depending [1] 202/6</p> <p>depends [5] 38/8 38/12 38/14 144/11 145/10</p> <p>depicted [2] 73/11 73/21</p> <p>depiction [1] 138/22</p> <p>deposition [24] 85/4 85/9 85/14 85/20 85/24 86/2 86/4 86/5 86/6 86/14 86/21 87/11 88/1 107/5 107/7 107/11 125/18 171/8 171/22 172/14 181/21 185/17 191/21 201/22</p>
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D	107/10 107/15 107/21 109/9 110/6 110/7 111/4 111/11 111/19 113/22 114/1 114/9 116/4 127/13 127/15 128/11 131/10 131/11 133/4 133/21 135/2 136/10 140/12 144/19 149/13 149/14 149/17 150/4 161/21 166/1 168/8 168/13 168/23 186/5 187/11 187/11 188/19 194/5 194/12 200/3 205/19 209/24 210/4 211/10 211/20 211/21 211/25 212/3 212/7 212/9 212/11 213/11 213/12 213/21 214/5 214/20 214/22 215/2 215/4 215/5 216/6 217/8 217/20 217/21 217/24 217/25 223/22 224/4 224/25 didn't [66] 8/20 10/22 12/24 13/18 14/18 19/3 19/13 39/17 40/22 43/11 43/14 45/3 53/10 53/13 55/16 56/7 56/11 56/16 57/17 57/20 58/2 58/19 59/21 63/10 63/20 63/22 64/10 66/8 70/22 75/3 75/8 75/9 75/21 84/2 85/6 85/11 87/10 91/19 98/9 107/2 109/25 110/6 111/3 111/11 111/17 136/1 144/23 145/1 149/16 151/22 152/2 152/4 153/21 153/23 165/13 171/23 175/21 187/20 188/8 188/11 190/20 202/12 203/2 215/1 217/17 217/18 died [1] 65/1 difference [6] 34/18 101/19 105/9 105/10 105/11 176/17 differences [3] 94/14 94/16 95/24 different [29] 17/4 33/23 33/25 60/23 61/1 69/23 69/24 71/24 79/16 91/3 96/4 98/16 123/18 130/17 139/17 141/9 160/5 176/16 187/24 196/3 196/19 196/19 196/21 196/21 203/22 214/1 215/9 217/13 217/13 differently [6] 60/23	61/7 61/7 196/16 204/23 205/14 difficult [3] 16/5 16/25 179/23 diligent [1] 22/11 DiPietro [8] 132/1 132/14 176/21 177/11 215/14 221/1 221/19 223/9 direct [18] 2/3 2/6 2/8 2/11 23/16 36/17 36/20 50/20 59/24 67/9 85/8 86/18 92/10 161/19 179/22 192/2 193/16 223/11 directed [1] 195/12 direction [3] 59/15 59/23 142/20 directive [1] 33/17 directly [2] 187/19 216/9 disagree [6] 10/1 51/23 51/25 84/21 111/12 138/5 disagreement [1] 176/8 disclose [1] 13/18 disclosed [2] 11/11 11/13 discuss [4] 41/24 70/1 215/9 218/21 discussed [5] 4/21 98/9 112/15 148/11 195/2 discussion [8] 18/11 87/17 102/13 165/23 172/9 185/9 185/10 210/8 discussions [3] 111/19 132/23 210/9 disease [1] 72/12 dishonest [1] 77/2 dismissed [2] 90/25 91/6 dispense [1] 148/7 dispensed [5] 95/9 108/15 120/15 144/4 214/2 dispenses [1] 146/7 dispute [2] 154/24 168/10 disregard [1] 179/5 distinction [1] 196/10 distinguishing [1] 185/19 DISTRICT [5] 1/1 1/1 97/4 227/5 227/6 DIVISION [1] 1/2 do [235] doable [3] 175/8	178/19 223/7 docket [1] 61/21 doctor [1] 17/25 document [20] 57/16 58/21 60/20 100/25 101/14 127/15 129/18 131/13 155/4 155/5 156/2 156/19 156/25 157/3 158/3 158/12 163/3 169/21 172/5 205/22 documentation [2] 42/13 148/10 documents [3] 107/2 154/16 217/13 does [37] 7/16 15/11 16/19 35/24 36/2 46/20 50/14 50/17 57/24 68/3 77/4 80/2 101/5 106/2 119/21 128/11 128/13 128/15 131/8 131/17 131/20 131/20 142/3 147/19 147/20 149/13 162/11 186/24 186/24 187/9 188/14 200/12 204/6 206/23 213/4 224/4 224/7 doesn't [14] 6/25 59/23 62/23 115/8 116/8 116/10 131/20 131/21 147/19 149/12 180/1 188/6 188/13 204/7 doing [19] 15/20 16/20 18/9 33/23 34/2 34/4 77/1 77/18 77/19 78/9 104/17 140/19 187/4 187/5 187/7 211/6 213/23 215/3 217/2 dollar [14] 97/23 129/15 131/2 131/5 132/6 154/23 155/2 166/21 167/1 167/12 167/18 186/12 187/1 224/18 don't [181] 4/11 4/17 6/1 9/11 9/16 11/1 11/10 11/13 11/17 11/24 12/8 14/9 17/2 17/4 17/16 17/16 19/23 20/21 20/23 21/14 27/22 28/3 34/5 34/25 43/24 44/2 46/6 53/21 55/3 57/4 58/21 59/5 64/6 75/6 75/10 77/20 80/22 81/4 81/9 86/1 87/8 87/9 87/25 89/1 90/7 92/24 93/3 97/25 102/23 103/12 104/6 104/23 106/17 106/21	107/13 108/16 109/1 109/4 109/16 109/20 109/24 110/8 110/17 112/3 112/8 113/1 113/23 114/8 115/17 115/20 115/23 116/15 117/16 118/18 119/3 125/15 126/3 132/8 132/20 135/4 138/9 138/14 138/18 140/2 140/19 141/1 141/6 141/12 141/12 142/7 143/3 143/14 144/17 145/23 147/25 149/22 149/23 153/6 154/20 154/24 157/6 158/7 158/21 159/24 160/9 160/20 161/18 162/24 165/3 165/3 168/9 169/14 171/15 172/13 173/24 174/23 175/5 175/7 176/24 177/16 177/18 178/14 179/8 179/22 180/9 180/25 181/15 187/6 188/4 195/11 197/2 197/15 197/15 197/25 198/2 200/15 200/15 200/18 200/23 201/5 202/12 203/3 203/14 203/17 203/25 204/10 204/18 205/12 205/12 205/22 209/5 209/20 211/23 212/11 212/13 212/14 213/12 214/6 214/9 214/22 214/22 215/23 215/24 216/9 216/21 216/22 216/23 216/23 218/4 218/9 218/21 220/18 222/16 222/17 222/23 223/11 224/17 224/18 224/22 225/13 225/20 done [22] 8/7 9/10 11/16 19/2 61/6 61/7 103/15 111/14 115/25 121/4 134/19 150/24 156/6 169/1 173/19 174/22 175/14 176/10 177/14 178/11 186/15 221/8 door [4] 10/2 10/5 10/6 168/10 doors [2] 9/22 9/24 dose [1] 72/11 doses [2] 35/15 160/5 dots [1] 161/24 double [25] 93/10 99/1 99/3 107/18 107/21 107/22 107/23 110/5
----------	--	---	--	--

D	149/12 149/15 149/19 150/4 150/13 154/5 154/7 154/9 154/11 157/15 157/23 158/5 163/13 164/2 drugs [50] 56/2 58/20 59/20 93/12 97/16 97/18 100/1 100/3 100/8 108/11 108/18 108/23 109/2 109/5 109/6 109/19 109/23 110/14 111/20 112/1 113/9 113/22 114/2 114/9 114/12 114/12 121/7 138/17 144/11 145/12 147/8 147/19 148/3 148/16 149/9 149/18 149/20 149/22 149/23 151/14 151/18 155/16 159/12 160/17 160/22 161/10 164/10 168/24 169/6 169/9 ducks [1] 215/11 Dulles [1] 179/17 duly [1] 120/8 duplicate [4] 119/22 150/10 165/6 165/8 duplicates [2] 99/12 161/12 duplication [8] 133/17 134/3 136/8 136/12 137/11 137/12 142/9 164/13 duplications [1] 137/15 duplicative [1] 142/16 during [22] 5/4 6/11 70/16 70/20 71/7 79/10 86/8 89/25 119/7 124/11 132/20 133/1 154/14 170/12 172/21 174/8 185/16 195/22 196/15 196/17 200/17 203/4 dying [4] 44/10 44/24 45/5 65/10 Dyke [1] 177/12 Dykes [11] 116/20 158/25 159/7 161/3 176/21 214/20 221/19 221/21 222/6 222/6 223/10	171/14 176/2 188/23 214/10 223/10 earlier [13] 13/15 37/13 39/11 42/1 85/11 87/11 91/17 94/8 116/17 158/23 176/23 187/13 210/10 early [11] 19/24 90/10 126/8 143/12 179/25 197/1 201/9 202/24 205/2 205/19 222/14 easier [3] 162/18 171/21 199/11 easily [2] 24/15 156/8 Eastern [1] 34/23 easy [1] 34/15 eat [1] 66/8 ECF [5] 50/23 61/25 85/9 93/1 184/10 ECF No. 254-19 [1] 184/10 Edgewood [1] 30/3 education [3] 25/20 68/8 71/3 effect [7] 95/7 142/10 142/24 142/25 143/17 143/19 167/17 efficiency [1] 16/21 efficient [3] 16/20 148/6 177/12 eight [4] 51/24 109/9 194/8 194/10 eight seconds [1] 51/24 eight years [2] 194/8 194/10 eighth [1] 109/14 EISER [2] 1/16 2/12 either [9] 63/16 64/12 85/3 95/21 131/1 142/17 162/20 202/8 216/21 elderly [1] 124/10 elementary [1] 103/19 eligible [2] 55/25 120/8 eliminate [4] 121/3 161/13 164/14 167/18 eliminating [1] 109/13 Elizabeth [1] 54/8 Eloise [3] 225/3 225/5 225/9 else [6] 17/8 20/8 56/20 59/21 165/12 221/22 email [41] 11/7 15/24 17/12 57/8 57/17 57/20 57/22 57/25 58/3 58/6 58/9 132/1 132/3 132/10 132/13 132/22	132/22 132/23 142/6 159/7 176/13 176/17 187/1 187/12 188/19 202/9 205/6 205/25 206/1 206/2 206/13 206/20 206/23 207/3 207/4 207/5 208/5 208/14 208/16 208/18 208/20 embezzlement [1] 5/10 Emmorton [27] 26/10 26/12 26/25 27/7 79/13 117/25 121/17 128/12 129/11 130/23 146/13 146/19 147/2 147/4 147/5 147/8 147/11 154/16 154/20 156/21 157/4 157/13 159/21 167/10 168/21 168/23 169/22 emotional [1] 45/12 emphasized [1] 174/1 employed [5] 23/22 23/23 23/25 24/2 68/20 employee [7] 27/16 28/20 30/9 41/10 62/20 69/22 77/3 employees [13] 27/17 27/18 27/19 28/7 28/19 34/9 34/10 34/10 40/21 77/16 77/20 77/21 217/23 employment [1] 78/25 empty [2] 38/6 38/6 encapsulates [1] 51/1 encountered [1] 133/11 end [11] 6/9 11/3 14/25 22/20 78/24 88/4 93/14 93/22 93/22 143/16 144/19 ended [2] 76/7 203/6 enforcement [1] 187/20 engage [1] 41/11 engaged [2] 7/19 8/4 English [1] 29/24 enough [5] 9/5 15/25 73/16 73/16 142/22 EnQuest [1] 211/9 enter [1] 104/15 entered [2] 5/18 104/18 entering [1] 104/15 enters [3] 66/19 77/7 92/6 entire [19] 13/24 45/4 45/12 85/8 86/3 86/5 86/6 86/18 87/18 87/25	91/7 117/25 129/11 151/6 158/9 164/15 165/9 166/18 168/20 entirely [5] 99/13 170/25 181/16 181/16 225/11 entirety [5] 85/15 134/17 135/20 135/23 158/17 entities [1] 191/6 entitled [2] 1/9 227/9 entity [1] 94/18 entries [1] 148/17 entry [1] 105/17 environment [3] 29/6 29/12 29/14 Ernest [5] 18/1 18/19 18/25 19/4 222/2 Ernest McCray [5] 18/1 18/19 18/25 19/4 222/2 erroneously [1] 5/5 error [3] 104/11 105/17 152/21 errors [26] 93/10 93/11 98/5 98/22 100/8 106/9 110/5 119/5 119/12 120/2 120/15 121/6 134/9 136/8 136/12 148/14 148/16 150/10 150/23 151/25 152/20 152/21 153/2 165/6 165/9 166/24 especially [1] 174/17 ESQUIRE [5] 1/13 1/13 1/15 1/15 1/16 esse [4] 85/14 107/5 107/11 172/14 essentially [4] 50/25 135/16 188/20 224/15 established [5] 102/22 164/25 165/3 165/7 201/1 establishes [2] 165/8 165/8 estimate [1] 170/16 estimates [2] 219/23 223/9 et [1] 1/6 Europe [3] 3/25 17/7 179/13 European [1] 16/24 Eve [5] 54/21 54/25 55/10 55/11 55/23 even [32] 5/15 12/23 14/18 15/16 16/7 19/13 20/23 21/3 43/13 45/3 70/2 70/3 70/4 77/2 77/2 90/1 98/4 98/13 103/6 103/6 103/9
----------	---	--	--	---

<p>E</p> <p>even... [11] 126/8 137/12 145/16 146/14 157/7 175/4 180/19 187/13 224/24 225/4 225/10</p> <p>evening [1] 85/10</p> <p>evenly [1] 38/11</p> <p>ever [25] 27/3 31/25 32/7 36/17 37/8 40/16 40/20 41/4 41/7 41/17 45/2 64/22 64/25 65/3 65/7 65/12 70/17 70/21 70/25 71/3 83/10 148/10 205/12 212/5 216/20</p> <p>every [20] 8/11 8/19 9/3 68/23 77/8 77/10 108/14 110/14 111/14 116/5 120/6 138/8 152/21 169/8 169/9 195/11 196/7 196/13 196/22 196/22</p> <p>everybody [11] 16/14 29/2 35/23 35/24 62/23 62/24 72/15 158/13 217/8 217/8 221/22</p> <p>everybody's [1] 221/4</p> <p>everyone [4] 16/15 72/16 99/17 100/17</p> <p>everything [22] 5/24 6/16 14/20 17/8 41/24 49/19 49/21 59/7 70/1 73/5 76/4 81/5 158/10 181/3 195/10 195/15 195/18 196/1 196/11 196/15 196/17 212/15</p> <p>everywhere [1] 210/23</p> <p>evidence [52] 3/19 5/10 6/17 7/5 7/7 7/12 8/1 9/10 10/15 10/20 11/16 12/25 13/5 13/9 13/14 13/14 13/20 13/25 14/8 18/15 18/17 19/6 22/21 28/18 40/7 43/22 43/23 47/17 49/22 51/21 51/21 51/24 61/11 72/20 74/8 106/6 116/6 118/10 123/9 129/18 150/1 155/5 168/9 169/18 184/11 206/15 207/24 212/22 217/12 224/12 224/15 225/1</p> <p>evidentiary [1] 9/25</p> <p>exact [3] 89/21 119/3 197/2</p> <p>exactly [14] 4/18 7/15 9/15 51/10 55/3 80/22 114/18 151/22 163/15</p>	<p>197/6 211/24 214/9 216/22 218/5</p> <p>examination [24] 23/16 49/24 50/1 51/13 52/4 59/1 64/19 65/22 67/9 78/19 78/21 81/18 85/8 85/15 86/19 92/10 108/5 108/7 118/10 148/23 160/13 168/6 193/16 210/17</p> <p>examining [1] 224/1</p> <p>example [22] 5/8 7/7 7/22 8/8 10/6 12/11 18/18 35/13 39/12 55/21 55/22 57/7 57/8 77/23 80/12 80/13 80/14 100/1 100/3 108/10 132/22 197/23</p> <p>examples [8] 108/22 111/14 119/21 119/23 120/21 120/21 120/22 120/24</p> <p>exasperated [1] 3/25</p> <p>Excel [8] 101/8 102/18 104/1 106/7 128/12 158/24 159/17 162/7</p> <p>excellent [1] 192/8</p> <p>except [6] 15/1 16/20 39/14 39/15 49/19 49/21</p> <p>exception [2] 126/13 176/11</p> <p>excerpt [1] 61/19</p> <p>excuse [4] 110/10 117/18 168/19 221/17</p> <p>excused [3] 84/16 170/3 218/12</p> <p>executive [2] 5/9 5/12</p> <p>exhibit [103] 11/9 11/17 22/9 38/23 38/25 39/3 39/4 39/7 39/12 39/19 40/3 40/7 46/5 46/9 46/24 47/2 47/17 55/19 61/11 61/18 61/19 61/22 61/25 61/25 72/20 72/21 73/8 73/9 73/11 73/18 73/19 73/22 74/9 92/25 99/18 101/6 102/14 102/25 102/25 104/8 104/12 104/12 108/11 114/18 114/23 116/3 116/4 116/5 116/14 118/23 121/16 122/6 127/13 127/19 127/22 128/1 128/4 128/7 128/8 129/18 131/4 131/16 131/25 132/13 134/16 136/21 142/2 142/4 154/15 154/19 156/16</p>	<p>158/3 158/8 159/2 160/10 160/15 161/2 161/24 162/3 162/23 163/4 163/8 165/21 168/9 168/20 169/17 169/19 169/20 172/1 172/6 182/3 183/24 183/25 184/2 184/6 184/9 198/13 199/6 206/16 206/17 212/22 213/3 223/24</p> <p>Exhibit 141 [3] 172/1 172/6 182/3</p> <p>Exhibit 144 [4] 73/18 73/19 73/22 74/9</p> <p>Exhibit 146 [8] 46/5 47/2 47/17 72/20 72/21 73/8 73/9 73/11</p> <p>Exhibit 149 [8] 38/23 38/25 39/3 39/4 39/12 39/19 40/3 40/7</p> <p>Exhibit 150 [1] 102/14</p> <p>Exhibit 37 [2] 129/18 154/19</p> <p>Exhibit 39 [6] 99/18 102/25 104/12 108/11 134/16 136/21</p> <p>Exhibit 4 [2] 102/25 104/12</p> <p>Exhibit 40 [2] 184/6 184/9</p> <p>Exhibit 42 [13] 101/6 104/8 116/3 116/14 127/19 127/22 128/1 142/4 159/2 161/2 161/24 162/3 163/4</p> <p>Exhibit 47 [2] 131/25 132/13</p> <p>Exhibit 5 [1] 183/24</p> <p>Exhibit 67 [2] 55/19 61/11</p> <p>Exhibit 7 [1] 198/13</p> <p>Exhibit 70 [10] 114/18 114/23 127/13 131/4 131/16 142/2 158/3 160/15 162/23 163/8</p> <p>Exhibit 85 [3] 156/16 158/8 168/9</p> <p>Exhibit 95 [2] 212/22 213/3</p> <p>Exhibit 97 [2] 61/19 61/25</p> <p>Exhibit 98 [8] 128/4 128/7 154/15 160/10 168/20 169/17 169/19 169/20</p> <p>Exhibit No. 7 [1] 199/6</p> <p>exhibits [7] 3/18 9/8 9/18 158/22 167/9 198/10 198/12</p>	<p>Exhibits 71 [1] 3/18</p> <p>Exhibits 98 [1] 167/9</p> <p>exists [1] 100/9</p> <p>exits [5] 66/15 84/19 117/22 170/4 218/25</p> <p>expanding [1] 111/20</p> <p>expect [4] 98/11 110/4 143/21 145/15</p> <p>experience [10] 83/9 83/12 83/18 83/25 204/19 214/4 215/3 215/17 216/24 217/7</p> <p>experienced [5] 214/12 215/12 216/13 217/3 217/14</p> <p>expert [20] 10/8 10/8 10/10 18/5 22/1 96/16 112/6 112/22 150/8 159/5 167/17 179/1 179/9 180/17 180/18 180/20 183/7 187/23 188/1 222/14</p> <p>expertise [2] 187/20 188/13</p> <p>explain [23] 8/12 27/10 28/22 30/8 31/3 32/15 34/8 35/9 36/8 36/21 39/15 42/5 42/24 44/23 45/16 66/4 69/19 80/1 80/14 103/19 104/11 117/18 120/1</p> <p>explained [2] 73/3 101/9</p> <p>explaining [2] 29/21 55/8</p> <p>explore [1] 106/16</p> <p>explored [1] 123/17</p> <p>expressing [3] 208/8 208/10 210/5</p> <p>extensions [1] 4/4</p> <p>extensive [1] 215/2</p> <p>extensively [1] 181/19</p> <p>extent [19] 93/19 94/14 95/19 97/2 97/5 97/12 97/22 107/15 111/21 112/23 113/10 133/16 134/23 151/14 162/11 164/12 165/6 213/21 215/2</p>	<p>48/3 48/6 48/7 51/8 55/8 58/9 60/20 61/3 61/4 61/6 98/8 118/9 149/25</p> <p>factual [1] 60/24</p> <p>failing [1] 153/12</p> <p>failure [1] 153/13</p> <p>fair [40] 9/5 18/12 21/23 25/7 26/22 35/1 35/17 37/3 37/23 38/16 38/19 39/8 39/19 47/3 47/13 48/7 48/15 49/8 70/5 70/11 73/16 73/16 73/24 74/5 74/21 76/7 76/19 82/4 84/3 89/23 90/2 123/8 142/22 159/24 160/2 197/8 200/20 201/3 202/4 202/8</p> <p>fairly [2] 11/21 15/6</p> <p>fairness [1] 16/21</p> <p>false [16] 43/4 43/5 48/18 48/19 53/3 54/11 54/15 54/19 59/2 59/3 59/7 71/20 71/22 73/14 97/24 225/12</p> <p>falsely [2] 60/7 60/8</p> <p>family [5] 27/13 76/14 77/11 78/1 124/15</p> <p>family's [1] 78/6</p> <p>far [27] 9/9 29/12 31/3 97/14 98/12 112/10 117/2 123/11 124/5 125/6 147/4 147/11 152/7 152/9 152/11 152/12 152/13 152/14 152/15 153/7 153/18 162/9 171/8 174/3 186/10 192/8 212/24</p> <p>FARBBER [4] 1/15 87/23 90/5 125/3</p> <p>fashion [7] 6/12 6/14 19/23 20/20 20/22 125/16 126/5</p> <p>Fassett [2] 18/4 222/13</p> <p>fast [2] 175/23 205/2</p> <p>fast-forward [1] 205/2</p> <p>faster [2] 92/25 104/24</p> <p>father [11] 44/21 44/24 65/1 65/8 65/10 75/11 75/14 76/13 76/16 76/18 124/10</p> <p>father's [2] 44/5 65/4</p> <p>fault [2] 4/1 13/15</p> <p>FBI [1] 42/7</p> <p>February [1] 181/13</p> <p>February 2014 [1] 181/13</p> <p>federal [10] 1/24 16/18</p>
--	--	--	---	--

F	Findlay [3] 25/22 25/24 26/1 finds [1] 122/5 fine [6] 8/2 180/12 180/21 220/10 223/1 225/22 finish [23] 4/14 22/1 53/11 53/13 53/15 87/1 87/2 125/18 125/23 126/8 126/13 170/15 171/3 171/5 172/25 173/17 175/1 175/5 175/7 192/21 208/19 219/14 220/14 finished [2] 89/22 155/17 fire [1] 70/21 first [50] 3/10 3/11 3/23 4/19 11/23 18/7 22/2 22/3 23/6 23/7 23/11 23/12 43/24 50/3 65/15 66/5 66/25 67/1 67/3 67/5 67/15 75/3 75/17 79/12 99/1 101/7 101/10 103/16 103/16 116/24 119/6 121/20 128/22 128/25 143/10 156/20 159/16 166/5 180/5 187/10 191/6 192/15 193/12 198/23 199/6 199/16 202/25 206/22 216/1 217/1 fit [1] 116/10 five [6] 51/3 141/9 160/3 175/6 208/3 218/4 five-day [1] 175/6 five-year [1] 51/3 fix [2] 86/24 170/24 fixed [2] 46/24 102/19 flashback [1] 208/16 flaws [2] 98/25 99/24 flight [1] 125/24 flights [3] 126/10 170/18 173/22 flip [1] 162/20 flipping [1] 162/18 floor [2] 1/24 37/19 FLOWERS [8] 1/13 2/3 2/4 2/6 2/7 4/24 81/7 174/14 Flowers' [3] 11/6 17/12 174/17 fluid [1] 217/10 fly [4] 44/6 44/9 45/1 53/7 focus [7] 36/7 40/20 99/19 102/1 154/15 206/1 221/12 focused [3] 6/23	120/24 141/15 folks [3] 18/8 86/18 201/21 follow [9] 7/23 28/6 32/16 37/1 41/18 41/23 64/6 130/19 130/25 followed [2] 205/8 209/11 following [3] 10/3 123/6 123/10 font [2] 121/24 154/17 force [2] 44/12 60/1 forced [8] 46/1 47/4 47/14 48/19 56/14 56/14 56/15 89/21 forcing [5] 44/8 53/5 56/21 71/14 71/17 foregoing [1] 227/7 forge [2] 36/18 37/8 forget [2] 7/14 77/14 form [7] 7/2 150/15 160/3 164/17 169/24 182/13 188/12 formally [1] 61/10 format [5] 104/1 106/7 109/2 109/6 227/9 former [1] 97/3 formerly [2] 107/5 193/21 forms [1] 160/4 forth [7] 8/3 50/19 91/15 99/6 162/19 162/20 171/10 forward [14] 6/14 8/9 12/10 22/24 51/12 106/24 112/17 125/1 173/1 177/6 178/7 182/11 204/3 205/2 fought [2] 75/3 75/8 found [26] 75/11 75/23 97/15 98/4 98/13 99/25 100/5 100/8 100/14 100/22 110/2 119/5 119/8 119/10 119/16 133/17 134/3 134/9 135/9 136/8 138/16 153/1 153/2 196/15 224/16 225/3 foundation [7] 10/22 13/3 144/23 144/25 145/1 182/14 183/12 foundational [1] 10/24 four [30] 6/24 10/4 12/7 13/18 17/13 20/4 20/7 42/16 42/18 42/19 66/8 66/9 67/24 77/1 124/21 124/22 124/24 125/1 141/9 160/3 160/17 160/22 161/10 173/25 175/6 208/3	220/2 221/15 221/16 221/19 four days [5] 42/16 42/18 42/19 66/8 66/9 four year [1] 67/24 four years [5] 13/18 20/4 20/7 77/1 173/25 four-and-a-half-year-o ld [2] 124/21 125/1 Fourth [4] 6/4 16/17 16/19 177/18 fourths [1] 3/10 frame [5] 186/5 186/10 187/25 201/8 203/5 framework [2] 108/23 186/23 frankly [5] 14/18 15/15 22/13 85/12 213/12 fraud [25] 7/10 7/19 12/19 26/19 41/5 41/11 41/14 42/2 42/6 42/13 42/25 51/4 52/13 54/2 54/12 65/16 70/18 174/8 193/21 211/6 211/13 211/20 211/21 213/10 215/3 free [2] 137/11 142/9 frequently [1] 5/2 Friday [13] 6/10 12/21 14/18 14/24 14/25 20/25 22/14 52/21 52/22 92/15 94/24 124/4 173/16 friends [1] 25/4 front [5] 62/22 62/24 103/22 109/7 198/7 Fronzaglia [1] 171/13 fulfill [1] 49/15 fulfillment [1] 185/8 full [3] 88/15 219/10 223/15 function [1] 149/12 functions [1] 150/19 fundamentally [1] 174/1 funds [1] 5/13 funeral [2] 65/4 65/8 Furnish [1] 213/1 further [15] 49/16 61/15 64/15 66/13 78/18 84/8 108/2 148/18 157/6 168/1 170/1 210/11 215/10 218/10 225/23 fussing [1] 62/22	219/7 220/11 220/16 220/19 220/19 gaps [3] 21/6 177/14 220/4 gathered [1] 202/5 gave [9] 4/4 4/5 48/3 48/6 51/1 52/18 80/12 184/21 185/8 Gayhardt [1] 213/7 general [7] 101/14 116/20 158/25 159/1 214/7 214/8 224/17 General's [1] 196/4 generally [4] 3/18 120/6 169/3 169/6 George [1] 97/2 Georgia [1] 210/24 get [75] 4/3 12/22 14/19 14/20 14/22 15/2 15/3 15/14 15/16 19/19 21/8 26/16 30/20 32/14 36/25 38/13 38/13 39/6 40/22 45/2 46/24 51/24 55/14 57/25 84/2 85/11 87/10 88/7 92/1 95/12 95/13 105/21 106/19 106/21 111/24 114/20 116/7 125/7 125/13 146/9 155/18 158/21 160/1 163/21 163/23 164/4 166/12 170/6 170/18 173/3 173/19 174/21 176/3 176/10 177/14 178/10 178/16 179/21 180/4 180/19 180/23 181/24 186/5 186/6 191/20 192/13 208/22 208/22 217/24 219/1 219/10 220/3 220/14 221/8 225/20 get-go [1] 51/24 gets [3] 5/12 103/8 111/21 getting [10] 30/1 34/6 38/14 75/12 120/12 120/14 166/4 217/12 221/5 225/8 Gillin [3] 187/6 187/17 188/5 Gillin's [1] 107/5 give [21] 3/21 19/6 27/15 32/11 34/3 43/23 73/4 75/20 78/24 88/1 89/13 89/24 89/25 106/13 106/18 125/6 153/25 157/2 178/4 191/21 196/1 given [21] 4/7 7/25 8/15 14/15 14/15 14/24 14/24 16/1 16/22 16/23
----------	---	---	--	--

<p>G</p> <p>given... [11] 16/24 19/7 21/20 22/14 25/8 33/16 53/21 70/2 98/8 143/1 218/2</p> <p>gives [1] 11/17</p> <p>glass [1] 122/14</p> <p>glitch [1] 102/19</p> <p>go [141] 5/15 5/23 7/12 10/12 16/11 17/1 19/24 21/7 21/7 22/1 25/11 25/20 26/4 37/18 37/22 39/20 41/2 45/9 49/3 51/24 53/15 53/17 55/4 55/19 55/20 57/5 57/6 58/23 59/8 59/11 62/8 62/18 64/1 65/1 65/4 65/8 65/10 66/2 66/6 68/9 68/23 74/17 75/14 75/18 83/22 85/24 87/3 91/9 92/22 92/24 97/10 101/8 103/22 103/24 112/17 112/19 113/2 114/16 115/16 115/22 116/2 116/7 119/4 119/6 119/10 121/6 122/12 122/12 122/16 123/11 124/5 124/5 125/1 125/9 125/16 126/9 127/12 130/6 131/4 142/20 150/3 155/18 155/22 158/2 158/13 158/14 159/2 159/23 160/9 160/9 160/11 160/15 161/8 162/4 165/20 166/15 167/1 168/17 169/2 170/6 170/20 171/24 172/13 172/13 172/19 173/1 174/24 175/11 177/6 177/17 178/7 180/23 181/20 182/16 186/2 189/5 189/9 190/6 190/20 191/16 191/18 191/24 192/9 192/12 192/17 198/16 201/7 204/2 204/3 204/9 204/14 206/20 208/2 208/2 208/19 210/15 213/9 218/10 220/5 221/24 222/12</p> <p>goes [9] 7/6 31/6 31/7 65/22 98/24 112/10 171/2 173/15 192/22</p> <p>going [128] 3/11 4/24 8/9 9/2 9/3 9/16 9/17 10/12 11/7 11/21 11/24 11/25 12/24 13/8 14/25 15/5 16/8 17/3 17/17</p>	<p>17/24 18/8 18/13 18/14 18/16 18/18 19/6 20/3 22/8 22/12 22/16 24/11 25/5 38/22 41/3 44/3 50/4 50/23 55/7 55/9 55/12 58/25 65/7 65/18 67/14 72/19 73/4 74/25 77/13 77/22 77/25 88/15 89/13 90/11 91/9 102/12 106/21 108/10 123/18 123/20 123/21 123/23 124/5 124/12 124/18 124/20 125/5 125/6 125/7 125/13 125/16 126/4 126/9 126/10 127/12 128/5 128/18 130/10 130/21 131/4 131/5 139/11 141/13 144/12 148/7 155/13 155/16 168/15 168/19 169/9 170/11 170/16 170/19 171/1 171/9 172/7 172/18 172/21 172/23 172/23 173/1 173/3 173/4 175/20 176/6 177/18 178/16 178/25 179/3 182/15 186/5 189/2 192/9 193/24 195/19 195/23 203/18 203/21 206/1 209/14 217/19 220/11 221/5 221/9 222/12 223/5 224/1 224/15 225/20</p> <p>gold [1] 77/5</p> <p>Goldey [2] 68/11 68/19</p> <p>Goldey-Beacom [2] 68/11 68/19</p> <p>gone [4] 7/21 16/22 152/14 200/25</p> <p>good [47] 3/2 8/8 19/8 23/19 23/20 27/15 27/17 27/20 27/24 27/24 28/15 39/12 61/9 61/14 67/12 67/13 75/19 75/21 77/14 77/19 77/19 84/3 92/13 92/14 128/16 171/7 178/6 182/10 184/5 188/24 192/4 193/19 193/20 198/21 207/10 210/20 210/21 214/18 215/12 215/18 216/6 216/13 217/3 217/14 217/21 220/5 220/21</p> <p>Google [3] 202/25 203/2 203/3</p> <p>got [33] 4/8 6/7 7/17 8/3 8/4 8/10 14/3 16/13</p>	<p>17/18 20/16 42/18 61/16 61/18 73/3 76/13 85/4 119/1 125/4 127/3 145/15 164/5 170/18 174/18 176/5 191/23 196/19 196/21 207/8 212/24 213/3 222/1 222/6 222/11</p> <p>gotten [3] 7/25 20/20 126/3</p> <p>government [86] 3/25 5/10 8/19 8/22 9/4 9/22 10/8 11/20 15/2 15/5 15/9 17/11 22/5 22/6 43/12 43/14 48/19 48/21 52/15 52/25 53/4 57/17 57/20 60/9 61/5 65/24 74/24 75/9 81/7 81/11 85/3 86/18 87/6 88/14 88/21 89/6 89/24 89/25 90/24 91/6 93/9 93/16 97/19 97/24 108/24 109/3 114/1 115/9 115/24 121/4 126/1 131/6 131/10 132/17 132/23 141/17 141/22 152/5 152/18 153/12 153/18 154/22 155/5 158/22 167/9 167/14 174/4 175/15 175/19 178/7 178/12 180/17 181/12 181/22 182/8 186/25 187/5 187/9 188/7 192/7 219/7 219/22 220/13 223/6 223/24 225/4</p> <p>Government's [21] 5/16 9/23 15/8 49/23 94/20 98/5 119/7 126/4 134/10 135/13 154/15 154/19 160/9 192/2 192/5 198/11 198/13 219/19 219/25 220/15 220/24</p> <p>graduated [1] 26/4</p> <p>graduation [1] 26/5</p> <p>grand [1] 109/7</p> <p>grateful [1] 181/7</p> <p>gratitude [1] 77/15</p> <p>great [5] 65/6 122/18 163/1 215/8 217/7</p> <p>greater [1] 98/13</p> <p>green [5] 40/23 40/24 40/25 41/1 146/16</p> <p>GREENBERG [12] 1/13 2/8 2/9 2/11 3/3 4/11 106/9 116/16 116/19 122/5 137/5 188/7</p> <p>Greenberg's [1] 85/18</p>	<p>Greensboro [2] 147/9 147/12</p> <p>greet [2] 77/8 77/11</p> <p>GSA [1] 175/1</p> <p>guarantee [1] 9/1</p> <p>guess [10] 39/23 85/3 85/9 103/7 165/15 192/20 194/7 204/18 218/12 220/9</p> <p>guilt [2] 5/11 7/1</p> <p>guilt/innocence [1] 7/1</p> <p>guilty [39] 7/10 43/9 43/11 43/13 43/14 44/2 44/7 44/8 44/11 44/20 44/25 45/3 45/14 45/20 46/1 46/2 47/4 47/14 47/25 51/8 53/3 53/5 53/9 53/16 53/18 53/20 53/24 54/1 54/11 54/15 54/18 55/7 56/22 75/4 75/6 75/8 75/10 75/14 91/3</p> <p>Gujarati [1] 29/24</p> <p>Gutberlet [14] 197/4 197/17 198/23 199/15 200/5 201/9 201/12 202/23 203/9 203/14 204/11 212/8 213/16 214/4</p> <p>Gutberlet's [1] 212/10</p> <p>guy [4] 34/13 75/20 216/5 216/7</p> <p>guys [1] 223/9</p>	<p>153/11 153/17 156/2 164/15 183/25 187/19 194/25 195/1 196/7 196/14 196/22 197/13 200/25 201/3 201/4 202/5 203/10 204/20 204/24 205/13 208/4 209/8 210/8 212/5 213/25 214/8 214/10 214/10 214/25 215/11 215/14 215/22 216/8 216/9 216/9 216/14 216/20 217/7 218/3 218/4 218/4 220/23 225/5</p> <p>hadn't [2] 16/7 159/4</p> <p>Hagin [1] 215/22</p> <p>half [13] 19/15 79/12 124/15 124/21 124/22 124/24 125/1 178/15 179/18 218/7 219/9 223/10 223/13</p> <p>Hall [1] 211/9</p> <p>Hammond [9] 93/15 93/25 98/10 99/6 100/5 101/22 116/21 139/7 153/8</p> <p>Hammond's [5] 93/19 93/21 94/15 95/24 153/1</p> <p>hamstring [1] 17/5</p> <p>hamstrung [1] 9/15</p> <p>hand [6] 23/3 66/21 91/13 117/2 128/5 129/1</p> <p>handcuff [1] 42/11</p> <p>handle [1] 90/2</p> <p>handled [2] 86/23 212/11</p> <p>handout [1] 174/8</p> <p>hands [1] 6/15</p> <p>handwriting [3] 102/16 104/1 205/7</p> <p>handwritten [2] 206/9 206/24</p> <p>happen [4] 34/14 43/2 104/13 219/2</p> <p>happened [7] 22/14 30/8 31/2 42/5 42/25 101/15 112/12</p> <p>happening [1] 41/15</p> <p>happens [3] 28/16 101/19 222/11</p> <p>hard [9] 30/13 80/14 87/15 130/19 178/23 181/6 216/5 217/8 217/14</p> <p>hard-working [1] 217/14</p> <p>harder [1] 177/1</p>
---	--	--	---	--

H	77/11 77/11 77/12 77/12 77/13 77/13 77/14 77/18 77/18 77/18 77/19 77/20 77/21 77/21 77/23 77/24 78/3 78/4 78/4 78/9 78/9 78/14 91/2 91/3 91/5 91/5 97/8 106/10 106/16 106/16 111/25 112/9 112/10 112/18 114/13 114/18 132/8 136/1 137/23 137/24 144/15 144/16 144/18 144/19 144/19 144/22 144/23 144/23 144/25 145/1 147/17 154/24 155/12 159/10 159/11 168/25 169/12 169/13 173/21 173/21 173/22 176/20 177/9 187/11 187/15 188/22 188/23 188/24 198/5 204/15 214/20 214/20 214/22 214/24 214/25 215/2 215/4 215/18 215/18 215/20 215/21 215/23 216/5 216/5 216/5 216/6 216/6 216/6 216/10 216/13 216/13 222/15 222/16 224/3 224/4 224/5 224/15 225/10	hears [1] 179/4 hearsay [1] 83/16 heart [1] 173/15 heavy [1] 39/25 held [6] 41/21 87/17 102/13 165/23 172/9 227/8 help [7] 30/16 31/10 77/13 115/9 122/15 205/23 217/19 helped [2] 78/4 78/4 helpful [2] 186/11 221/4 hepatitis [2] 72/11 154/7 her [66] 29/10 30/9 32/10 33/22 34/5 34/16 43/15 47/12 58/19 66/10 69/22 69/22 69/23 73/25 74/1 74/2 74/4 81/4 83/17 83/18 85/3 85/6 85/8 93/22 150/12 164/14 171/3 171/5 171/6 179/23 179/24 180/3 180/4 180/9 180/9 180/10 185/7 185/18 187/7 187/22 192/21 195/10 196/7 197/21 197/23 200/7 203/9 204/8 207/4 208/22 212/10 213/14 213/16 213/19 214/5 214/14 214/17 215/5 215/6 215/7 216/14 216/16 216/25 217/1 218/20 222/16 here [64] 4/6 6/11 6/16 6/17 8/11 12/20 14/10 14/13 14/19 14/20 15/2 15/11 17/7 17/10 39/1 39/1 42/15 42/18 52/7 52/10 54/11 59/12 61/7 66/5 91/2 102/12 108/10 111/3 117/17 117/24 123/25 124/16 125/13 137/13 145/24 148/11 159/24 160/17 161/24 164/1 164/4 165/12 172/24 173/22 174/21 177/20 177/21 177/22 178/17 179/13 179/19 179/24 180/4 187/5 187/16 207/16 207/18 208/8 210/24 212/21 216/18 220/3 220/13 223/15 Here's [1] 5/14 hereby [1] 227/6 herring [1] 118/5 herself [1] 36/13	hey [2] 7/22 10/9 hiatus [1] 175/6 hiccup [1] 173/2 high [1] 130/6 higher [1] 95/8 highlight [7] 102/2 115/15 158/4 158/14 162/24 163/12 163/13 highlighted [5] 58/23 59/12 129/23 129/25 158/17 highlighting [1] 130/1 him [64] 7/13 25/6 30/16 36/13 50/15 50/19 53/11 63/7 63/15 63/17 65/25 65/25 75/5 75/5 75/5 75/13 75/14 75/24 76/6 76/24 76/25 77/1 77/5 77/12 77/17 78/2 82/5 87/2 90/24 91/7 114/17 114/20 114/21 137/25 155/8 155/13 172/23 172/24 208/5 212/3 212/5 213/1 214/22 215/14 215/17 215/18 215/21 215/22 215/24 216/2 216/6 216/8 216/9 216/10 216/20 216/21 216/23 222/14 222/17 222/25 224/3 225/19 225/20 225/21 himself [1] 78/13 Hindi [1] 29/24 his [49] 3/5 7/1 7/1 16/8 19/8 23/25 26/7 27/11 27/12 27/18 28/7 28/19 52/15 53/11 53/13 65/8 65/10 65/22 75/14 76/15 77/14 92/4 106/16 118/5 143/22 143/22 144/4 144/5 144/8 144/15 144/16 144/18 147/18 154/22 159/16 161/19 169/24 172/25 172/25 215/24 216/4 216/12 216/12 216/22 216/24 221/12 222/15 222/16 225/2 history [1] 211/4 hit [3] 171/10 171/15 172/18 HIV [16] 35/13 72/12 100/4 100/8 100/15 109/4 109/6 119/25 140/9 149/18 149/19 149/22 151/1 154/5 161/14 164/10 hold [7] 9/2 21/16 118/8 126/9 170/19	180/22 186/4 holiday [3] 6/3 6/4 55/24 hollering [2] 139/12 147/22 home [6] 7/15 19/24 36/24 68/10 76/17 211/10 honest [2] 49/14 76/24 Honor [193] 3/5 3/12 3/16 4/19 4/21 6/13 7/4 8/10 8/23 9/6 9/13 10/18 10/21 11/1 11/3 11/6 11/15 12/2 12/6 13/11 13/13 13/21 15/7 16/9 16/16 17/5 17/12 18/7 18/11 18/17 18/19 19/9 19/14 20/2 20/6 20/10 20/16 21/4 21/5 21/10 21/18 21/20 22/4 22/10 22/17 23/1 40/6 40/9 42/20 46/8 46/15 46/25 47/16 48/24 49/16 49/25 50/2 50/17 50/21 51/14 51/14 51/19 52/2 53/10 53/12 53/13 58/25 60/22 61/8 61/10 61/16 61/18 62/4 62/6 64/17 65/23 66/13 66/17 74/8 78/16 78/18 81/16 84/7 84/11 84/20 84/24 85/1 85/13 86/25 88/5 88/13 88/17 88/24 89/10 89/12 89/18 90/7 90/21 91/11 91/21 92/3 92/8 94/6 97/8 97/25 101/2 102/16 106/2 106/8 106/23 107/24 108/3 111/24 112/5 116/11 117/23 118/6 118/13 121/16 122/4 122/19 123/16 123/21 124/9 124/17 124/23 125/12 126/1 126/12 126/20 127/5 128/10 148/21 155/7 156/1 161/25 167/6 168/2 168/14 168/25 169/17 170/2 170/13 170/16 170/21 171/12 173/12 174/1 174/10 174/10 175/3 175/9 175/16 176/6 178/5 178/8 179/3 179/4 179/8 179/14 179/18 180/8 180/16 182/9 183/24 185/7 186/8 186/11 186/22 188/3 188/20 190/20 191/4 192/17 193/6 204/8 207/22
----------	--	---	---	---

H	86/5 86/15 87/12 87/18 88/25 89/15 94/24 96/22 98/9 100/3 100/22 100/22 103/3 104/13 107/17 110/15 110/17 111/5 111/8 112/10 119/14 120/25 122/16 125/6 125/7 126/11 129/8 131/6 135/21 137/6 138/9 139/7 147/4 147/11 147/17 148/9 148/13 151/21 152/25 156/11 157/12 159/7 159/17 161/16 162/6 162/7 162/8 170/25 172/15 174/23 175/5 185/7 185/10 191/16 192/17 192/22 198/2 198/22 199/14 204/2 206/2 206/5 208/4 211/21 212/19 212/20 214/17 218/1 219/25 223/12	189/3 189/4 189/23 190/8 190/10 190/24 191/10 204/2 222/17 225/14 225/14 I'm [130] 3/11 5/21 6/5 6/8 10/12 15/5 15/19 19/16 19/19 21/4 24/11 28/4 31/17 38/22 41/3 41/21 43/7 45/23 54/3 55/5 58/4 58/25 59/24 67/14 69/1 72/19 72/23 73/2 73/4 84/2 85/11 89/12 90/8 93/3 96/7 101/9 102/12 103/19 105/11 106/21 108/10 112/13 113/17 113/17 114/14 114/23 115/2 118/9 118/11 119/4 123/14 123/15 123/19 123/19 124/13 124/14 124/16 125/3 125/13 125/24 126/6 126/9 126/20 127/12 128/5 128/8 128/18 129/17 130/10 130/25 131/4 131/4 131/25 137/9 139/11 139/24 142/4 144/24 145/6 153/21 155/12 156/11 157/1 162/6 165/19 167/5 168/15 168/19 170/17 170/19 170/25 172/21 172/22 172/23 175/2 175/2 175/21 177/5 177/17 177/20 177/20 177/21 180/7 181/3 182/1 182/15 189/1 192/8 193/24 194/19 197/4 197/6 198/20 200/14 204/2 205/17 206/1 207/4 209/14 210/7 211/1 218/11 219/6 219/10 219/12 220/10 222/18 222/22 224/1 225/1 I've [18] 6/7 17/9 19/17 20/16 38/24 39/2 39/3 46/4 61/16 61/18 73/3 84/13 129/23 132/20 164/5 190/21 192/11 206/10 idea [11] 7/18 10/6 12/18 17/15 18/9 35/8 50/4 58/9 156/10 170/19 219/9 identification [5] 38/23 46/4 73/18 102/15 113/4 identified [6] 98/22 99/2 133/15 141/8	149/5 183/24 identifies [1] 100/12 identify [3] 93/10 120/2 135/18 ill [1] 97/3 ill [3] 35/16 55/15 222/15 illegal [1] 225/3 illuminate [1] 155/9 immediate [1] 213/8 immediately [1] 12/22 immigration [1] 40/14 impact [10] 118/20 119/23 119/25 146/1 150/5 185/9 186/24 187/4 187/9 188/6 impacted [1] 120/25 important [11] 32/15 96/9 173/15 181/9 185/10 194/15 195/24 202/5 202/10 202/13 209/7 imposed [1] 88/18 impressed [1] 192/11 impression [2] 216/12 216/25 inaccurate [1] 164/12 inadvertently [2] 100/18 105/15 inappropriate [2] 28/12 187/6 inclined [1] 118/11 include [8] 35/24 36/2 72/17 91/24 139/19 140/12 151/4 164/12 included [20] 86/22 87/15 91/18 91/18 99/2 117/7 138/15 139/22 139/25 140/5 140/14 141/19 141/23 142/9 142/16 142/23 149/4 149/8 151/14 196/7 includes [3] 13/14 72/2 72/5 including [3] 123/18 162/25 205/19 inclusion [1] 153/14 inconvenient [1] 124/13 incorporate [1] 143/17 incorporated [1] 86/18 incorrectly [1] 172/3 increase [2] 144/10 149/5 increasing [3] 142/10 142/24 143/18 incredible [1] 65/24 incredibly [1] 16/25 incrimination [1]	50/19 Indeed [1] 56/3 independently [3] 94/18 95/22 99/5 INDEX [1] 2/1 India [12] 25/12 25/13 40/17 40/22 41/2 44/7 44/10 53/17 68/2 68/4 68/10 70/22 Indian [15] 34/9 34/10 34/16 34/22 35/1 35/24 36/2 40/21 53/8 69/20 69/22 70/3 70/5 78/1 78/6 Indians [1] 12/15 indicate [1] 117/4 indicated [2] 15/23 154/11 indicted [2] 144/15 144/19 indictment [2] 45/17 224/11 individuals [1] 55/24 indulgence [4] 49/1 74/15 157/9 167/22 inefficiency [1] 16/13 inefficient [1] 86/13 infected [1] 30/11 infestation [3] 30/6 30/19 30/23 influence [1] 145/16 information [24] 10/10 104/15 133/4 133/10 136/17 139/19 139/21 139/22 141/10 159/5 194/13 194/17 194/18 194/22 194/25 201/8 202/5 202/10 202/12 209/21 209/24 210/5 223/23 224/7 informed [1] 141/17 initially [4] 197/4 212/11 213/18 213/19 innocence [2] 7/1 7/1 innocent [6] 6/22 7/7 43/8 45/22 45/23 75/4 input [1] 139/10 insist [1] 174/23 insisted [1] 125/1 instance [4] 115/5 115/7 115/12 115/14 instances [3] 120/9 120/11 120/17 instead [2] 104/18 149/18 insurance [5] 56/4 57/10 75/21 211/6 218/2 intend [1] 3/20 intended [2] 113/8
----------	---	---	--	---

I	217/24	155/5 156/3 156/7	80/24 81/2 210/25	206/3 207/3 207/5
intended... [1] 186/14	involves [1] 174/7	157/3 157/4 159/2	211/15 211/15	225/4 225/6
intentional [1] 209/25	involving [1] 133/18	162/13 162/17 164/18	joined [9] 197/12	July 12th [3] 6/9 6/10
inter [2] 114/25 115/8	irrelevant [4] 118/5	165/18 166/23 166/25	197/15 198/15 200/13	10/19
inter-store [2] 114/25	118/7 149/24 151/19	167/2 168/11 169/22	200/21 201/3 201/4	July 17th [1] 20/2
115/8	is [437]	170/22 172/5 172/16	211/12 217/16	July 1st [2] 207/3
interactions [1] 49/11	isn't [19] 56/25 57/3	173/4 173/14 174/8	joining [1] 211/4	207/5
interchangeable [3]	57/13 58/5 58/12 59/19	175/2 175/8 176/16	joins [1] 6/15	July 2013 [3] 195/23
105/16 118/3 161/17	60/12 63/25 109/12	178/9 178/22 179/18	joint [2] 183/24 183/25	205/3 205/19
interest [7] 94/5 123/7	109/14 109/21 109/23	179/22 181/2 181/8	JOSEPH [1] 1/10	July 23rd [4] 8/7 8/9
204/25 208/9 208/10	135/19 135/23 139/23	184/6 184/6 184/11	JOSHUA [1] 1/13	109/7 203/6
209/9 210/5	144/14 156/2 160/21	185/11 185/13 186/11	JR [1] 1/10	July 25 [2] 42/7 225/4
interested [1] 3/14	176/12	186/17 187/4 187/6	judge [55] 6/20 8/18	July 25th [2] 26/16
interesting [1] 133/9	issue [26] 4/24 5/15	188/1 189/2 189/4	20/12 20/13 21/2 23/21	225/6
interrupt [2] 11/7	10/13 10/15 10/16	198/23 199/11 199/15	26/14 28/22 30/8 31/4	July 28th [1] 6/10
168/8	10/25 51/6 90/22 99/14	221/9 225/11 225/13	32/16 34/8 35/10 36/9	July 3rd [1] 206/3
interview [3] 52/25	117/18 120/24 143/2	225/20	36/21 38/6 39/16 41/20	June [15] 1/6 6/6 6/7
71/7 200/18	156/8 156/9 156/12	itemize [1] 225/2	42/5 42/24 44/23 45/16	20/25 80/5 80/6 80/12
interviewed [1] 71/3	161/11 176/6 179/3	its [12] 5/10 5/24	47/25 65/18 66/4 67/16	80/12 80/15 80/15
interviews [6] 194/24	180/25 181/2 181/10	16/17 56/1 85/15 93/9	69/4 69/20 71/6 73/21	173/17 173/18 173/19
197/21 197/23 213/24	181/17 185/16 185/20	108/24 113/22 134/17	97/2 97/5 97/8 97/12	176/11 227/12
217/21 217/23	187/16 223/21	135/19 135/23 220/13	97/15 98/13 103/8	June 1 [2] 80/12 80/15
intimidated [1] 225/6	issues [16] 5/4 6/24	itself [3] 60/21 147/11	110/2 123/5 124/25	June 10th [1] 173/19
introduce [2] 85/20	7/24 10/4 12/5 14/10	158/3	128/10 132/13 138/16	June 14 [2] 80/12
106/17	14/24 19/10 86/22 99/1	J	141/17 159/25 162/21	80/15
introduced [1] 223/23	99/3 99/9 113/5 133/15	J.S [5] 58/13 59/14	164/3 172/21 174/6	June 16th [2] 173/17
invent [3] 57/17 57/20	134/3 175/14	59/15 59/18 60/15	175/24 177/12 181/5	176/11
57/22	it [456]	42/19 64/23 65/15 66/5	206/11 210/22 225/16	June 17th [1] 173/18
inventory [19] 94/25	it'll [5] 106/12 122/10	jail [6] 42/16 42/17	Judge Anderson [35]	Juneteenth [1] 6/3
95/6 143/8 143/15	162/5 169/1 178/14	42/19 64/23 65/15 66/5	6/20 8/18 23/21 26/14	jurisdictions [1] 60/23
143/19 143/22 144/1	it's [149] 7/3 9/10 9/10	James [4] 215/22	28/22 30/8 31/4 32/16	jury [9] 4/1 4/6 4/7 5/6
144/11 144/12 144/13	10/16 10/16 12/19	216/1 221/20 222/7	34/8 35/10 36/9 36/21	6/8 63/13 97/20 109/7
145/11 145/24 148/5	13/12 13/19 15/10	Janet [1] 218/6	38/6 39/16 41/20 42/5	177/1
149/19 151/11 151/15	17/24 20/6 20/13 21/23	January [8] 156/24	42/24 44/23 45/16 66/4	just [239]
153/4 153/5 153/8	22/7 22/24 24/7 25/12	156/24 157/14 157/22	67/16 69/4 71/6 73/21	justice [2] 123/7
investigation [19]	25/18 25/22 25/25	168/22 168/22 194/1	103/8 124/25 128/10	173/20
194/16 194/20 194/23	26/10 26/22 29/2 29/7	197/1	159/25 162/21 164/3	K
195/22 195/25 196/17	29/9 29/16 30/13 30/16	January 19th [1]	175/24 177/12 181/5	Kaletra [18] 114/24
196/18 197/1 197/13	33/25 37/16 40/24	156/24	210/22 225/16	131/12 138/11 138/13
200/13 200/21 204/16	41/21 43/17 45/8 45/12	January 1st [2]	Judge Bredar [5]	146/10 160/19 161/7
212/10 212/16 212/19	46/14 46/18 46/19	157/14 157/22	20/13 21/2 123/5	161/12 161/14 162/8
213/5 213/11 213/17	48/15 53/21 54/5 54/24	January 2013 [1]	172/21 174/6	162/24 162/24 163/5
214/21	60/6 61/6 62/2 62/4	197/1	Judge George [1]	163/9 163/13 163/19
investigations [2]	65/20 73/1 74/21 80/22	January 3rd [2]	97/2	163/21 164/10
211/21 215/3	83/19 83/19 84/3 87/15	156/24 168/22	Judge Michael [1]	Karnataka [1] 25/12
investigative [3]	88/25 89/15 89/16	January 6 [1] 168/22	132/13	keep [8] 4/15 31/8
214/14 215/7 217/5	89/23 96/9 97/15 98/23	Jaswinski [1] 218/6	Judge Russell [6]	31/11 32/9 32/12 88/18
investigator [11]	103/13 105/10 106/11	Jed [6] 2/8 15/14	97/5 97/12 97/15 98/13	165/20 178/23
194/10 194/12 197/18	112/3 112/25 115/17	15/16 89/21 92/4	110/2 138/16	keeping [1] 34/4
211/1 211/6 211/16	118/1 118/5 118/6	125/18	judgment [1] 4/3	keeps [1] 207/13
211/17 213/18 214/5	118/24 120/12 121/14	Jeremy [4] 158/25	judicial [3] 6/5 174/19	kept [7] 35/20 36/6
214/12 215/23	122/20 124/23 124/23	161/3 214/20 221/19	227/10	36/6 43/12 45/17 45/17
investigators [4]	124/24 128/25 129/3	Jersey [1] 30/10	July [35] 4/13 4/14 6/4	75/7
195/13 196/5 201/13	129/4 129/8 129/16	JFA [1] 1/5	6/9 6/9 6/10 6/10 8/7	kids [8] 24/20 24/21
201/17	130/25 131/1 131/15	Jigar [1] 57/8	8/9 10/19 15/21 15/22	24/22 24/24 25/3 25/4
invoice [8] 95/15	132/1 133/22 142/1	Jimmy [5] 201/16	19/24 20/1 20/2 20/3	67/21 67/22
95/19 129/19 156/21	145/3 145/4 146/4	201/16 201/18 201/18	20/15 21/2 26/16 42/2	kind [36] 11/2 16/11
156/22 157/13 159/9	146/4 146/6 151/18	216/20	42/6 42/7 53/1 81/12	16/23 22/14 30/6 31/10
169/22	152/14 152/16 153/23	job [11] 19/18 26/6	109/7 144/15 195/23	31/13 35/13 39/8 51/4
involved [2] 212/9	154/4 154/9 154/10	26/8 68/23 68/25 75/25	203/6 205/3 205/19	

K	196/19 197/2 197/15 197/25 198/19 201/18 202/12 204/18 207/10 208/13 209/5 209/5 209/8 209/20 211/23 211/25 212/3 212/11 212/13 212/24 213/12 213/21 213/22 213/25 214/6 214/24 215/2 215/5 215/9 215/23 216/18 216/22 216/23 217/1 217/9 217/11 217/17 217/19 217/22 220/22 220/25 221/4 222/18 223/11 224/8	143/23 144/9 175/17 176/20 177/8 183/6 193/12 222/11 lasted [1] 88/1 late [7] 4/20 11/4 14/13 55/4 55/9 92/15 94/24 later [10] 14/17 46/24 90/12 127/6 184/20 184/23 187/17 187/23 189/3 220/19 latest [3] 7/14 173/18 206/1 Lating [72] 3/19 7/3 8/2 8/4 10/21 13/7 14/2 18/20 43/24 43/25 44/16 44/17 45/25 47/3 47/9 47/14 47/18 48/22 71/4 71/6 71/10 72/2 73/1 73/12 73/13 74/1 115/1 118/2 149/2 156/7 158/2 158/10 158/18 160/15 161/1 161/1 162/12 162/19 164/24 165/17 166/16 166/18 195/10 195/17 195/20 195/25 196/6 196/25 197/6 197/8 197/9 197/12 200/22 201/1 201/3 201/13 201/23 202/25 203/5 205/3 205/9 205/12 205/20 207/6 207/10 208/12 209/3 209/6 209/7 210/6 216/25 225/7 Lating's [1] 46/11 Laura [7] 43/15 43/24 44/15 45/25 47/3 47/9 47/14 Laurie [11] 197/4 197/17 198/23 199/14 200/4 201/9 203/9 203/14 212/8 212/9 213/16 law [14] 3/21 8/14 41/18 76/13 76/16 76/18 123/4 155/15 170/17 171/9 171/18 177/15 180/23 187/19 175/11 LAWRENCE [1] 1/16 laws [1] 41/23 lawsuit [1] 52/15 lawyers [3] 5/1 5/5 125/4 lay [1] 189/1 layperson's [1] 94/21 lead [8] 86/17 165/9 174/4 197/6 197/10	213/18 213/19 217/3 leader [1] 196/25 leading [7] 33/18 71/8 82/20 82/23 149/25 167/2 167/3 learned [4] 194/15 195/22 196/17 205/4 least [14] 16/2 17/13 92/19 124/18 127/14 140/11 141/8 143/12 147/7 161/5 181/13 203/9 222/1 224/3 leave [2] 26/15 181/10 leaving [2] 126/20 127/1 left [12] 78/6 101/18 102/24 170/10 194/3 194/4 199/24 201/9 201/11 201/12 202/23 202/24 legible [2] 104/1 106/7 length [1] 164/9 lengthy [1] 135/9 less [10] 11/9 12/1 17/18 21/4 94/19 94/21 94/22 131/2 131/3 224/8 let [57] 5/1 15/2 17/6 17/11 18/3 19/17 21/9 21/16 22/7 22/7 22/11 31/2 31/13 33/15 33/16 43/19 45/8 47/23 50/14 53/10 53/17 60/19 72/7 73/2 75/14 82/23 83/24 84/13 85/5 87/1 87/2 88/14 118/11 126/24 146/9 152/19 161/21 165/12 170/6 170/15 172/21 175/3 177/22 189/2 195/4 195/25 196/9 196/16 198/19 204/23 205/14 205/17 205/24 206/22 207/10 208/12 212/21 let's [91] 4/10 17/22 21/7 21/7 22/1 22/24 36/7 51/12 55/19 57/5 90/2 90/4 90/11 94/3 95/12 96/13 97/1 99/17 101/9 101/25 102/1 102/1 103/18 106/24 110/22 112/17 112/17 122/20 126/10 127/8 130/23 138/12 143/15 149/2 155/2 155/18 158/2 158/4 158/13 159/2 159/16 159/23 159/23 160/9 161/8 161/9 163/12 163/13 163/25 164/1 165/13	165/20 165/20 166/15 172/13 172/19 173/5 180/23 181/20 181/24 182/11 186/21 192/13 192/15 192/22 195/21 198/4 198/7 198/13 199/13 200/24 201/7 201/8 202/8 202/17 204/2 204/12 204/14 206/13 206/20 207/14 208/1 208/2 208/2 218/10 219/1 220/14 221/18 222/9 223/15 225/13 letter [17] 132/18 184/7 184/24 185/8 186/23 187/8 188/5 188/6 188/12 206/7 206/9 206/24 207/8 207/12 207/13 207/20 208/1 letters [2] 70/2 185/11 level [3] 134/25 187/20 224/17 liability [3] 211/10 211/10 211/11 liar [1] 12/18 Lidoderm [20] 114/24 121/8 127/16 127/25 129/23 130/12 131/12 154/3 154/15 155/9 160/19 161/5 165/13 165/14 165/16 166/5 166/6 166/9 166/18 167/9 lie [2] 7/16 65/25 lied [2] 65/23 65/24 life [10] 27/22 27/25 45/4 45/12 66/8 77/13 77/22 77/25 78/14 166/24 light [4] 180/17 184/20 186/17 187/7 like [117] 9/8 14/16 14/19 18/10 21/10 25/4 27/12 27/13 27/14 27/21 28/19 29/2 30/13 31/8 32/9 32/13 32/14 32/17 32/21 33/15 34/11 34/15 34/16 35/13 36/10 37/13 37/18 38/8 38/10 38/11 38/12 38/12 38/14 39/13 39/17 40/3 41/2 41/12 41/15 42/8 42/14 42/16 42/19 43/7 43/11 43/14 44/24 45/12 45/16 45/17 46/23 47/11 49/14 52/14 55/5 55/6 57/24 61/10 62/13
----------	---	--	--	--

L	220/24	61/12 94/17 95/14 99/7	119/11 119/12 119/17	211/21
like... [58] 62/21 62/22	listed [3] 120/12	99/24 108/11 108/14	119/22 119/24 134/17	map [1] 222/22
62/23 62/25 63/5 66/7	128/22 128/25	108/17 108/20 108/20	134/23 135/2 135/9	March [3] 59/13 59/16
66/8 72/11 74/15 76/25	listen [4] 16/14 24/12	109/10 110/1 110/2	135/12 135/19 135/23	156/18
77/9 77/16 77/22 77/24	24/14 209/14	111/10 111/12 111/20	136/8 137/19 150/11	March 11 [1] 59/16
80/4 83/25 84/4 85/1	listing [1] 141/23	117/8 128/19 151/24	150/13 150/24 153/14	March 2013 [1] 59/13
85/23 87/20 87/21 88/1	lists [1] 35/12	153/7 215/19	161/12 161/13 161/15	March 28th [1] 156/18
88/5 88/25 93/22	literally [2] 7/13 60/21	looking [13] 7/2 8/9	163/19 163/21 164/13	mark [1] 38/22
101/22 102/18 103/19	little [21] 12/14 29/22	17/10 47/2 74/4 146/16	165/4	marked [10] 38/24
103/25 104/11 105/3	31/13 47/11 47/12	166/22 166/24 170/8	made [14] 16/24 27/22	39/3 46/4 54/3 72/19
106/6 120/25 123/6	73/15 74/2 74/4 90/12	172/22 205/23 213/24	28/8 28/15 29/10 29/16	73/17 114/23 118/25
126/8 128/3 131/11	91/17 92/22 102/18	217/20	34/17 35/15 104/7	129/17 131/25
137/7 137/18 149/12	104/24 127/14 139/13	looks [6] 46/23 73/15	105/8 105/17 144/11	Marketing [1] 68/11
150/10 150/11 154/23	178/23 200/9 210/23	74/2 100/11 170/8	153/24 215/10	Mary [2] 93/15 116/21
155/7 167/15 169/17	219/1 219/6 219/12	200/3	magistrate [1] 141/17	MARYLAND [23] 1/1
170/8 178/9 180/1	live [4] 24/18 24/19	Lori [9] 85/2 107/4	magnifying [1] 122/14	1/6 1/25 26/5 28/24
192/17 197/1 200/3	28/24 210/24	107/15 150/11 164/13	mail [1] 206/11	30/3 60/23 96/2 97/4
212/20 215/20 219/9	lived [5] 28/22 29/5	165/7 172/14 181/23	main [3] 46/20 53/17	140/12 140/23 140/24
224/14 225/11 225/17	30/2 65/1 210/23	187/16	225/2	142/8 142/8 148/3
liked [2] 215/18	living [6] 28/21 29/6	Lori Cannata [1]	maintained [2] 37/5	149/12 159/1 193/21
215/20	30/4 30/13 77/25 78/3	181/23	59/13	211/4 211/12 211/15
likewise [2] 8/17 49/23	Liz [1] 53/22	Lori Cannata's [1]	major [6] 94/16 173/3	225/19 227/6
limit [3] 15/25 113/8	local [7] 31/9 31/9	165/7	174/6 174/21 191/12	massive [2] 118/4
113/22	34/13 37/13 37/16	lose [1] 21/7	214/15	160/5
limitations [3] 51/3	37/17 38/3	loses [1] 177/18	majority [2] 105/10	master [1] 25/21
51/6 90/22	locally [1] 38/13	losing [1] 173/21	212/18	match [2] 161/1
limited [8] 8/21 92/17	location [3] 32/5 149/5	loss [13] 93/14 94/20	make [33] 4/10 9/24	162/11
92/18 93/6 98/16 98/17	203/1	97/23 98/5 100/5 100/6	22/4 28/2 28/16 45/6	matches [1] 163/15
177/10 221/9	locations [1] 159/10	119/7 137/21 154/23	45/11 55/13 62/21	matching [1] 177/4
Limiting [1] 152/20	log [3] 36/22 37/2 37/9	167/1 167/18 167/20	65/25 70/4 88/6 88/7	math [6] 88/4 103/12
Linda [2] 34/11 34/15	logical [1] 4/15	186/12	92/24 96/8 97/13 100/7	153/19 161/3 171/18
line [8] 59/1 64/1	logs [12] 36/5 36/6	losses [2] 138/8	104/24 106/19 121/25	171/24
115/10 116/24 149/23	36/7 36/8 36/10 36/13	142/10	125/24 147/19 148/2	matter [14] 1/9 5/20
188/23 190/25 208/3	36/18 36/21 36/23 37/1	lost [2] 219/12 220/19	148/4 162/1 171/25	8/21 54/12 112/2
line 13 [1] 64/1	37/5 56/4	lot [15] 106/9 139/22	173/22 179/3 180/1	151/15 151/16 151/18
lines [2] 62/18 130/19	Lombard [1] 1/24	151/21 153/1 153/2	185/14 191/13 217/10	173/13 173/15 187/23
lines 10 [1] 62/18	long [21] 40/25 45/21	155/20 155/21 171/20	219/17	188/2 197/14 227/9
Lisa [45] 7/22 12/11	54/24 80/22 86/5 86/6	172/17 175/20 196/3	makes [5] 7/5 34/15	MATTHEW [1] 1/15
12/13 13/5 14/1 14/4	86/15 87/18 88/25	215/18 215/21 217/7	99/17 100/17 188/24	Maura [39] 43/15
32/1 32/6 32/12 32/20	111/5 164/21 171/1	223/23	making [5] 53/3 54/11	43/24 44/15 45/25 47/3
33/3 33/15 33/22 34/4	172/15 174/15 177/21	loud [1] 55/21	54/15 213/24 215/19	47/9 47/13 48/22 71/4
34/7 34/8 35/6 35/22	178/3 192/17 219/23	lower [2] 95/3 95/7	malice [5] 6/19 8/5	71/6 71/10 72/2 73/1
69/17 69/19 70/14	219/25 223/12 225/13	lunch [6] 90/12 91/12	16/4 19/3 156/4	73/12 73/13 74/1 195/9
72/17 82/13 82/24 83/1	longer [5] 57/2 58/14	122/16 123/4 158/24	malicious [1] 10/4	195/17 195/20 195/25
83/9 84/1 84/5 203/10	58/20 191/16 220/18	177/16	maliciously [1] 14/7	196/6 196/25 197/6
203/15 205/6 205/15	longstanding [1]	lying [1] 7/14	man [3] 7/6 18/1 65/24	197/8 197/9 197/12
205/20 206/10 206/24	124/10	M	managed [3] 140/12	201/1 201/3 201/13
206/25 207/8 207/13	look [35] 3/21 14/16	ma'am [9] 66/20 66/24	140/24 141/1	202/25 203/5 205/9
208/8 208/15 208/15	39/13 73/7 93/8 98/21	76/11 78/15 193/11	management [3]	205/12 205/20 207/6
208/21 208/23 209/8	98/23 99/10 100/10	198/8 198/18 199/3	25/25 41/22 58/6	208/12 209/3 210/6
210/5	102/18 109/25 110/6	210/1	manages [1] 5/17	216/25
Lisa Ridolfi [2] 69/17	115/16 116/2 121/20	MADAP [47] 96/3	Mannava [1] 55/24	may [39] 4/9 9/11 9/11
69/19	130/24 133/8 133/14	96/10 96/11 96/15	manually [1] 104/15	21/17 22/20 22/20
list [22] 11/9 11/17	135/8 146/9 156/22	96/15 96/17 96/22	many [23] 8/14 8/15	50/20 59/16 66/14
18/5 18/5 19/12 22/9	157/7 157/8 157/20	96/22 96/25 99/12	10/9 12/9 16/8 20/19	66/23 84/9 85/4 85/10
22/10 35/14 35/16	159/16 162/19 171/24	102/23 103/7 103/9	20/24 24/20 29/21	85/21 86/25 101/4
35/17 35/17 35/20	199/24 201/8 206/13	105/22 105/24 107/16	38/12 38/13 38/14	102/17 107/12 107/13
35/22 59/13 85/4	206/20 207/2 208/1	107/17 109/13 109/22	40/23 56/1 67/21 68/5	107/24 118/20 122/4
129/20 170/8 170/11	208/18 208/20	110/25 113/4 118/20	79/16 111/8 125/7	136/11 142/6 159/7
170/12 183/25 220/23	looked [23] 8/7 47/9		139/19 148/13 198/2	161/3 163/3 170/11

M	177/22 178/2 178/4 181/2 191/12 191/22 196/1 196/9 196/16 198/19 202/21 204/23 205/14 205/17 205/22 205/24 206/22 207/3 208/14 208/21 208/23 209/10 212/14 212/21 219/5 221/17 223/1 223/9 mean [53] 5/23 10/11 11/10 17/9 20/3 20/16 21/1 34/21 39/16 50/3 57/24 77/20 80/1 80/2 86/7 97/18 103/18 104/22 118/5 119/15 122/10 147/1 153/22 164/6 168/8 171/4 176/5 178/22 180/6 180/8 188/14 195/18 195/18 196/1 200/14 200/16 204/22 212/20 212/20 213/14 213/22 214/7 215/8 217/7 220/9 220/17 221/3 221/25 221/25 223/8 224/2 224/22 225/10 means [8] 5/5 12/9 20/23 35/12 36/10 36/23 94/22 149/18 meant [3] 5/2 153/21 182/1 measure [1] 90/21 Med [10] 35/9 35/10 35/12 35/17 35/17 59/13 72/8 72/8 72/9 72/14 Med-4 [10] 35/9 35/10 35/12 35/17 35/17 59/13 72/8 72/8 72/9 72/14 media [1] 174/7 MEDIC [101] 93/23 94/1 94/14 94/17 94/19 95/3 95/15 95/18 95/19 95/24 96/4 96/6 96/7 96/7 96/9 96/9 96/21 96/23 96/24 98/9 98/10 98/12 98/21 98/25 99/2 99/21 99/23 100/8 100/14 100/22 101/15 104/16 107/17 108/14 108/17 108/24 110/11 110/23 111/11 111/12 111/15 120/3 121/17 121/22 128/12 129/14 132/17 132/24 133/10 134/6 134/14 134/19 136/12 136/15 137/22 138/8 138/19 139/23	139/25 140/4 140/7 140/10 140/12 140/16 141/10 141/19 141/23 142/9 142/24 143/11 143/23 144/19 144/20 149/9 149/23 150/10 151/10 151/14 151/24 152/2 152/5 152/17 153/7 153/11 156/3 156/21 157/21 158/7 159/12 159/13 164/14 165/8 165/9 165/21 167/10 167/10 168/10 186/13 186/15 187/24 188/21 MEDIC 1495 [45] 94/1 94/14 94/17 94/19 95/3 96/6 96/24 98/9 98/10 98/21 98/25 99/2 99/21 99/23 100/8 100/22 101/15 104/16 108/14 108/17 110/11 110/23 111/11 111/12 120/3 121/17 128/12 129/14 136/12 138/8 138/19 140/16 141/10 141/19 141/23 142/9 142/24 143/11 143/23 149/23 152/5 156/3 167/10 186/15 188/21 MEDIC 1884 [5] 95/24 96/9 96/23 100/14 107/17 MEDIC 1997 [2] 158/7 165/21 MEDIC's [1] 187/3 Medicaid [27] 7/10 41/5 42/2 42/6 42/25 51/4 120/6 120/9 120/9 120/10 120/13 133/18 140/4 140/7 140/17 140/24 141/2 142/8 193/21 211/5 211/12 211/15 211/20 213/10 213/25 217/22 218/2 Medicaid-fraud [1] 51/4 Medicare [5] 120/8 120/11 120/21 120/22 133/18 medication [12] 27/23 31/12 35/10 35/14 37/3 37/18 57/11 58/2 58/14 59/14 72/10 148/9 medications [22] 12/12 18/22 18/23 32/9 33/23 35/9 39/19 39/23 41/8 55/12 57/2 59/17 71/1 100/4 100/15 119/25 139/6 161/14	214/1 214/1 214/3 218/5 medicine [5] 34/5 36/11 36/11 36/14 36/24 medicines [5] 31/6 31/17 34/5 55/14 59/22 meds [1] 57/10 meet [2] 75/17 81/11 meeting [8] 81/6 123/5 195/1 195/4 199/15 199/18 200/2 200/18 meetings [10] 41/17 41/21 41/23 194/24 197/24 201/21 202/4 202/7 202/9 217/11 Melissa [2] 107/7 182/4 Melissa Rapoza [1] 182/4 member [1] 186/25 members [4] 194/20 194/23 195/12 197/15 memo [7] 198/22 199/14 199/21 200/14 200/16 200/16 202/9 memory [4] 55/6 58/22 198/14 208/7 memos [3] 197/20 197/23 212/10 mentioned [15] 26/25 27/17 42/1 45/14 45/25 47/23 53/23 89/18 91/16 100/17 121/7 197/17 206/15 221/14 224/25 mentions [1] 225/10 mere [1] 14/22 Merit [1] 227/4 message [1] 8/18 met [2] 73/25 76/6 methodological [3] 98/24 99/24 100/7 methodology [1] 99/6 MFCU [17] 193/22 193/24 194/7 194/12 195/19 195/20 196/12 197/5 197/18 201/9 201/17 202/24 204/20 211/22 213/20 214/9 215/23 Michael [4] 132/1 132/13 215/14 221/19 microphones [1] 91/22 mid [1] 107/13 mid-May [1] 107/13 middle [2] 34/23 156/23 midnight [1] 179/15	might [25] 3/8 17/21 55/11 56/9 63/5 64/6 64/7 84/12 91/2 103/20 115/9 132/8 162/18 165/19 171/5 177/14 181/9 181/17 189/1 194/3 205/23 218/7 219/6 219/17 224/20 mild [1] 154/3 milligram [7] 104/17 117/1 128/23 157/19 157/24 158/6 162/8 milligrams [4] 114/24 114/25 138/13 146/10 milliliter [3] 117/1 157/19 157/24 millimeter [1] 158/6 million [8] 97/23 98/4 98/5 144/8 144/16 145/15 151/12 151/13 mind [2] 81/9 165/20 mindful [1] 15/24 minimum [1] 7/17 minute [9] 8/20 50/3 50/5 90/14 162/5 169/1 173/5 192/23 207/19 minutes [18] 87/13 87/16 87/20 87/21 89/1 122/11 122/21 157/2 170/22 172/16 182/4 182/6 182/6 191/25 192/2 192/3 192/6 218/8 mirrors [1] 117/24 mischaracterization [1] 10/20 mischaracterized [1] 114/8 mischaracterizes [6] 114/4 133/20 137/23 142/12 145/18 207/11 mischaracterizing [1] 207/20 miscommunicated [1] 177/7 miserable [2] 66/7 66/11 misheard [2] 105/14 141/20 misremembering [1] 162/6 miss [1] 35/15 missing [4] 3/3 72/10 173/21 225/1 misspoke [2] 160/14 219/11 misspoken [1] 165/19 misstatements [1] 86/14 misstates [1] 207/24
----------	--	--	--	--

M	200/21 201/4 201/14 201/23 216/8 Mosley's [2] 132/21 133/1 most [9] 5/5 143/7 148/6 157/3 175/16 177/12 186/25 201/24 219/17 mostly [2] 32/12 156/25 Motaparthi [1] 225/7 motel [1] 28/24 mother [1] 24/24 motions [1] 223/20 mouth [1] 71/14 move [32] 6/14 22/24 35/8 40/6 47/16 51/12 61/11 74/8 87/8 90/6 94/3 94/9 95/10 96/13 97/1 104/24 106/24 113/20 152/22 157/3 157/6 167/5 168/9 169/17 182/11 182/21 183/6 201/6 204/12 220/7 220/12 222/16 moved [7] 4/1 4/2 14/20 29/5 78/7 106/6 174/14 moving [3] 126/7 187/16 219/12 Mr [12] 2/3 2/4 2/4 2/6 2/6 2/7 2/8 2/9 2/9 2/10 2/11 2/12 Mr. [223] 3/3 4/11 4/24 6/21 7/9 7/16 7/19 10/17 11/6 11/8 12/12 12/17 12/18 13/16 13/17 14/7 16/7 16/10 17/12 18/2 18/6 18/13 19/7 20/5 22/5 23/19 23/21 23/25 24/11 24/18 25/11 26/6 26/19 27/10 27/11 27/18 28/1 28/7 28/11 28/19 28/20 28/25 29/15 29/23 30/12 30/17 30/22 31/2 33/22 34/21 35/4 35/8 35/9 36/5 36/17 36/20 37/8 37/11 37/22 38/24 39/8 40/12 40/13 40/16 40/21 41/3 41/5 41/7 41/11 41/13 41/17 42/1 42/24 43/9 43/22 45/14 45/19 45/25 47/2 47/9 47/12 47/23 47/25 48/9 48/10 48/14 48/25 49/2 49/6 49/7 49/8 49/11 49/13 52/7 52/13 54/4 54/21 56/25 57/13 58/4 58/12 59/2 59/12 59/19	60/3 60/6 60/11 60/14 60/19 61/20 62/10 62/19 63/9 63/11 64/9 64/22 64/22 64/25 65/3 65/7 65/12 66/4 67/18 69/5 70/17 70/21 71/1 74/16 75/17 75/19 81/7 81/21 82/9 82/11 84/10 85/18 89/23 90/4 90/25 91/8 91/9 92/4 92/13 92/24 93/3 93/16 94/12 97/6 97/12 97/13 97/22 97/24 99/17 99/19 101/12 102/8 102/22 104/6 105/20 106/9 106/10 107/1 108/10 109/12 116/13 116/16 116/19 118/22 118/24 119/7 119/21 122/5 126/14 127/12 128/3 128/18 129/17 130/20 132/21 137/5 143/21 144/8 144/14 147/17 150/9 151/23 152/25 155/8 156/16 158/16 159/7 160/13 164/24 166/1 168/19 169/24 173/20 174/12 174/14 174/16 174/17 174/17 174/25 175/11 176/3 176/18 177/8 178/1 179/12 181/22 184/5 186/25 187/5 187/11 188/7 191/12 200/10 201/23 211/25 219/20 221/21 222/6 222/6 Mr. Annappareddy [70] 6/21 7/9 7/16 7/19 12/12 12/17 12/18 13/17 14/7 16/7 16/10 18/2 19/7 23/25 27/11 27/18 28/1 28/7 28/11 28/19 28/25 29/15 30/22 36/17 37/8 40/16 40/21 41/5 41/7 41/11 41/13 41/17 48/10 49/2 49/8 49/11 52/13 60/11 60/14 62/10 63/9 63/11 64/9 64/22 64/25 65/3 65/7 65/12 70/21 71/1 74/16 82/9 82/11 91/8 92/4 126/14 143/21 144/8 144/14 147/17 173/20 174/17 174/25 175/11 176/3 176/18 177/8 178/1 181/22 211/25 Mr. Annappareddy's [9] 18/13 30/17 48/14 49/13 90/25 93/16	97/13 97/24 119/7 Mr. DeGroff [3] 186/25 187/5 187/11 Mr. Dykes [4] 159/7 221/21 222/6 222/6 Mr. Flowers [3] 4/24 81/7 174/14 Mr. Flowers' [3] 11/6 17/12 174/17 Mr. Greenberg [8] 3/3 4/11 106/9 116/16 116/19 122/5 137/5 188/7 Mr. Greenberg's [1] 85/18 Mr. Major [1] 191/12 Mr. McCray [1] 219/20 Mr. Mosley [1] 201/23 Mr. Mosley's [1] 132/21 Mr. Patel [54] 13/16 23/19 23/21 24/11 24/18 25/11 26/19 27/10 28/20 29/23 31/2 33/22 34/21 35/4 35/8 35/9 36/5 36/20 37/11 37/22 38/24 39/8 40/12 40/13 41/3 42/1 42/24 43/9 43/22 45/14 45/25 47/2 47/9 47/12 47/23 47/25 48/9 48/25 49/6 49/7 52/7 54/4 54/21 56/25 57/13 58/4 58/12 59/12 59/19 60/3 60/6 62/19 64/22 66/4 Mr. Patel's [1] 61/20 Mr. Phelps [10] 10/17 18/6 20/5 22/5 59/2 60/19 81/21 174/12 179/12 184/5 Mr. Phelps's [1] 174/16 Mr. Reddy [6] 26/6 30/12 45/19 69/5 70/17 75/17 Mr. Reddy's [1] 75/19 Mr. Smith [42] 84/10 89/23 90/4 91/9 92/13 92/24 93/3 94/12 97/6 97/12 97/22 99/17 99/19 101/12 102/8 102/22 104/6 105/20 106/10 107/1 108/10 109/12 116/13 118/22 118/24 119/21 127/12 128/3 128/18 129/17 130/20 150/9 151/23 152/25 155/8 156/16 158/16 160/13 164/24 166/1 168/19 169/24	Mr. Smith's [1] 11/8 Mr. Tokofsky [1] 200/10 Mr. Vipin [1] 67/18 Mrs. [27] 13/17 67/12 67/14 67/15 68/7 68/14 68/18 68/20 69/4 70/16 70/24 71/3 71/17 72/7 72/14 72/19 72/21 74/13 74/21 75/15 75/16 76/2 78/12 78/24 81/21 83/24 205/4 Mrs. Arnold [1] 205/4 Mrs. Patel [26] 13/17 67/12 67/14 67/15 68/7 68/14 68/18 68/20 69/4 70/16 70/24 71/3 71/17 72/7 72/14 72/19 72/21 74/13 74/21 75/15 75/16 76/2 78/12 78/24 81/21 83/24 Ms. [75] 43/15 43/24 43/25 44/17 45/22 45/23 47/3 47/18 54/8 56/24 66/18 68/1 85/18 86/20 87/5 87/23 89/14 90/5 93/19 93/21 93/25 94/15 99/6 100/5 107/11 107/18 123/22 123/23 125/3 125/10 125/11 136/5 139/7 150/22 150/25 151/3 151/9 153/1 171/23 179/14 179/25 180/4 180/6 180/7 185/17 187/6 188/5 188/10 192/20 193/19 201/12 201/23 202/23 204/6 204/11 205/5 206/23 207/10 208/21 208/23 208/24 209/6 209/7 209/10 209/24 210/4 210/20 214/4 218/21 219/7 219/15 220/14 221/18 221/18 223/6 Ms. Arnold [12] 192/20 193/19 204/6 206/23 209/24 210/4 210/20 218/21 219/7 219/15 220/14 223/6 Ms. Cannata [4] 87/5 107/11 107/18 188/10 Ms. Cannata's [7] 85/18 136/5 150/22 150/25 151/3 151/9 185/17 Ms. Elizabeth [1] 54/8 Ms. Farber [3] 87/23 90/5 125/3 Ms. Gillin [2] 187/6
----------	---	---	--	--

M Ms. Gillin... [1] 188/5 Ms. Gutberlet [4] 201/12 202/23 204/11 214/4 Ms. Hammond [4] 93/25 99/6 100/5 139/7 Ms. Hammond's [4] 93/19 93/21 94/15 153/1 Ms. Lating [8] 43/24 43/25 44/17 47/18 201/23 207/10 209/6 209/7 Ms. Maura [1] 47/3 Ms. Oyer [3] 45/22 45/23 56/24 Ms. Pascale [6] 123/22 125/11 179/14 180/6 180/7 221/18 Ms. Patel [1] 68/1 Ms. Pragna [1] 66/18 Ms. Rapoza [3] 86/20 89/14 171/23 Ms. Ridolfi [1] 205/5 Ms. Wilkinson [10] 43/15 123/23 125/10 179/25 180/4 208/21 208/23 208/24 209/10 221/18 much [20] 4/13 8/13 17/1 29/7 87/12 89/15 136/14 139/21 177/1 191/16 202/12 203/3 204/2 213/15 214/23 216/23 216/24 218/9 220/12 222/23 multiple [2] 37/19 148/17 multiplied [1] 167/12 my [125] 3/16 3/24 4/1 5/14 6/4 19/20 23/7 23/11 23/12 24/13 24/25 25/4 25/4 25/21 25/21 26/5 29/8 29/9 40/25 41/21 42/7 42/9 42/11 42/16 44/3 44/5 44/7 44/8 44/10 44/10 44/24 45/1 45/3 45/4 45/4 45/12 45/13 45/23 46/13 53/5 53/6 53/17 53/22 55/6 58/21 64/6 64/7 66/8 66/9 67/1 67/1 67/5 67/6 67/17 67/24 67/24 68/10 68/11 71/14 74/16 75/3 75/7 75/9 75/11 75/16 75/18 75/22 76/13 76/16 76/18 79/12 79/21 87/12 89/7 89/11	91/21 97/15 97/16 97/21 98/3 102/16 103/20 104/1 113/3 118/23 119/6 119/19 119/23 120/24 122/18 123/4 124/10 130/10 133/7 133/14 133/16 135/21 135/23 140/22 141/15 151/3 151/9 152/6 152/8 153/9 154/4 155/15 170/15 170/17 170/21 171/18 173/4 177/15 180/8 180/23 181/2 182/1 196/6 199/10 209/15 209/15 209/18 213/8 215/4 219/5 N name [27] 18/1 23/6 23/7 23/7 23/11 23/12 23/12 30/9 32/1 43/15 43/24 43/25 66/25 67/1 67/2 67/3 67/5 67/6 69/16 77/10 77/10 81/4 184/1 193/12 199/25 200/4 200/7 named [1] 93/15 names [3] 23/9 101/18 213/4 narrow [3] 6/24 111/25 113/8 natural [1] 109/10 near [1] 89/2 nearly [1] 173/20 necessarily [5] 200/18 212/13 212/14 216/23 217/18 necessary [1] 175/13 necessity [1] 172/18 need [47] 3/20 3/23 6/1 12/24 14/20 15/17 19/21 20/25 21/1 21/21 24/12 35/14 39/6 45/5 46/24 50/19 55/12 55/14 65/23 88/15 89/1 91/17 91/19 93/3 93/4 106/17 106/21 114/11 116/8 123/25 124/1 125/15 125/24 145/21 153/15 157/7 158/21 161/23 164/20 170/23 171/15 179/21 209/12 224/8 224/17 224/18 224/22 needed [4] 56/8 148/9 148/9 217/19 needle [1] 87/9 needs [3] 32/8 171/24 224/5	Neelesh [1] 17/24 Neelesh Vaidya [1] 17/24 negative [2] 117/3 169/7 neglected [1] 90/23 neither [1] 18/20 never [42] 13/9 37/10 40/18 41/1 41/6 41/9 41/12 41/12 41/15 42/11 43/7 45/3 56/2 63/15 63/16 63/23 65/11 66/6 66/8 70/19 70/23 71/2 74/22 77/1 77/14 82/17 83/11 83/13 84/5 85/4 109/17 152/5 152/9 152/12 152/16 152/18 153/5 153/18 186/5 187/19 212/24 225/4 new [27] 5/4 5/15 5/20 8/21 10/11 11/15 19/10 22/18 22/18 29/13 29/16 29/16 29/17 29/17 30/9 30/10 54/21 54/25 55/9 55/11 55/23 61/18 77/14 121/16 184/3 187/18 188/8 newbie [1] 187/18 news [1] 174/7 next [30] 4/12 4/13 15/20 17/8 17/15 19/14 19/23 20/23 21/6 22/25 25/20 50/18 52/22 66/16 94/3 95/10 96/13 101/7 127/8 129/21 157/20 159/16 170/5 175/7 181/20 192/16 193/5 222/11 222/14 223/17 nice [3] 30/16 34/11 34/13 nickname [1] 223/25 night [7] 3/24 4/21 55/4 55/9 85/15 89/19 89/25 nine [3] 110/10 143/22 159/9 Ninety [1] 61/23 Ninety-seven [1] 61/23 no [119] 1/4 3/7 3/7 4/8 7/2 7/3 7/24 8/20 9/5 12/2 12/3 13/4 13/15 17/15 18/9 18/17 19/11 19/25 22/18 35/21 40/9 40/23 41/9 46/12 46/12 47/20 49/16 50/17 53/2 55/18 57/2 58/9 58/14 58/20	60/13 61/13 63/10 63/12 63/23 64/11 64/24 65/2 65/9 65/14 65/22 66/13 72/22 74/10 74/23 74/23 78/18 84/7 87/6 95/12 106/4 109/20 117/11 121/21 123/9 123/17 123/25 123/25 124/23 125/8 126/3 126/4 132/15 133/5 133/12 134/6 136/17 137/12 137/15 140/4 140/7 140/9 142/21 142/22 142/25 143/19 143/19 146/1 146/7 148/12 148/18 150/5 155/25 163/9 163/9 166/23 167/20 167/20 169/12 169/23 170/2 174/12 174/15 175/10 175/13 175/17 177/1 180/18 186/9 196/7 196/13 196/23 198/11 203/17 205/10 205/11 212/2 212/4 212/6 215/16 216/15 216/21 217/3 223/3 225/24 No. [4] 50/23 92/25 184/10 199/6 No. 142 [1] 92/25 No. 254 [1] 50/23 nobody [6] 20/8 42/9 42/12 84/6 124/6 139/9 nodded [2] 81/8 81/9 non [2] 22/6 36/2 non-government [1] 22/6 non-Indian [1] 36/2 none [1] 158/11 nonjury [1] 176/23 nonresponsive [1] 43/18 Nope [1] 60/15 normal [12] 6/12 6/14 19/22 20/20 20/22 90/13 123/9 125/8 125/9 125/16 126/4 186/16 North [6] 140/10 147/9 147/12 147/20 148/3 151/1 North Carolina [6] 140/10 147/9 147/12 147/20 148/3 151/1 NORTHERN [1] 1/2 Norvir [22] 100/20 100/23 101/8 102/1 102/9 102/24 103/1 103/15 104/12 104/17	104/18 104/19 105/22 114/25 160/19 160/20 161/13 161/14 161/16 162/25 164/1 164/11 not [266] note [8] 51/16 127/14 127/24 155/15 168/13 174/10 178/12 222/7 noted [2] 15/8 51/15 notes [1] 1/22 nothing [10] 5/9 20/3 64/15 108/2 117/12 147/23 168/1 198/11 210/11 224/4 notice [7] 11/10 12/1 17/18 17/20 19/11 20/10 94/14 November [2] 76/14 76/15 novice [1] 185/20 now [82] 4/10 4/24 6/17 9/7 10/9 10/9 11/2 15/11 17/20 17/22 20/11 21/11 22/2 24/2 36/20 37/11 41/3 42/1 49/12 50/7 52/15 54/18 76/19 80/22 82/2 82/6 84/10 85/19 87/22 87/22 90/15 91/10 96/14 98/15 99/17 104/8 107/1 107/15 112/9 118/9 118/12 120/1 122/17 122/23 128/3 131/14 136/17 145/24 149/22 152/17 154/14 155/2 155/4 155/18 156/13 156/16 158/7 158/21 159/20 160/25 166/21 170/14 172/20 173/6 173/21 174/21 174/22 177/5 179/12 187/1 187/22 188/7 191/23 192/24 205/2 206/13 210/25 212/25 218/5 220/22 220/23 221/14 number [41] 13/23 13/24 19/4 19/6 61/22 62/1 80/21 85/16 96/15 96/21 99/2 99/4 102/11 102/22 117/7 117/12 118/20 119/4 127/20 127/24 137/16 138/14 138/18 157/15 159/25 162/9 162/11 162/13 163/8 163/10 163/15 164/7 165/19 165/20 166/5 184/3 197/20 198/16 199/6 206/16 206/17
---	---	--	--	---

N	202/11	121/2 124/3 128/25	116/10 121/7 130/23	Optimum RX [5]
numbers [28] 104/23	obvious [4] 19/2	129/23 130/1 130/23	131/21 131/22 131/24	133/19 133/21 134/4
115/17 115/22 119/11	166/23 166/24 166/25	131/2 131/10 132/5	132/6 132/12 138/12	134/5 134/6
136/20 137/10 137/13	obviously [7] 12/18	132/16 134/9 135/5	139/5 141/8 142/7	options [1] 123/18
151/22 152/19 153/13	21/18 84/21 87/7 176/7	136/8 136/25 138/7	142/20 143/7 148/5	Optum [1] 211/3
153/16 153/25 158/16	179/24 221/13	138/24 139/5 140/16	150/10 150/11 154/20	order [22] 4/15 10/4
159/13 159/23 160/25	occasion [6] 27/3	140/20 141/8 142/8	154/21 157/15 160/3	16/12 16/18 19/12
161/2 161/6 164/9	31/25 33/8 69/9 69/15	143/15 143/21 144/7	160/6 160/18 162/17	19/19 20/21 123/7
164/11 164/24 165/10	82/24	144/14 146/22 147/14	163/9 166/5 168/2	124/6 125/8 125/9
166/11 166/21 166/23	occasionally [1]	148/2 148/16 148/18	168/4 168/25 169/8	146/25 147/19 148/6
166/25 169/7 187/14	213/14	154/11 156/19 157/5	169/9 170/22 174/17	175/17 175/18 176/9
numerous [1] 210/8	occasions [1] 5/19	157/10 160/21 161/7	175/10 177/2 177/16	176/25 177/3 177/13
nuts [1] 213/23	occurred [1] 132/17	163/1 163/25 166/4	178/13 180/1 180/22	181/1 220/25
O	October [2] 57/9 93/23	167/21 169/15 171/20	181/8 181/12 185/4	ordered [1] 179/24
oath [8] 48/3 48/6 51/7	October 31st [1]	173/4 175/3 176/3	185/16 186/6 188/23	ordering [2] 81/5
51/8 51/11 91/2 91/3	93/23	192/20 194/18 194/22	191/6 196/13 196/14	144/5
92/7	October 8 [1] 57/9	195/15 196/9 197/17	198/10 198/11 202/7	organizations [2]
object [10] 8/15 46/8	off [13] 3/21 12/20	198/1 199/5 199/9	206/3 208/2 217/18	140/13 140/25
58/25 106/8 112/23	59/6 87/17 99/1 102/13	200/2 202/1 202/8	218/11 222/11 222/20	oriented [1] 76/14
120/4 139/11 143/1	119/2 165/23 170/12	202/14 202/17 203/8	223/10 223/10 223/19	original [2] 188/16
156/1 207/11	172/9 180/2 219/18	203/18 203/20 205/18	225/7 225/16 225/18	206/11
objected [1] 176/13	220/23	209/16 211/12 211/25	ones [4] 80/9 115/2	originally [2] 104/20
objecting [1] 191/4	offer [4] 26/8 183/8	212/9 214/20 216/1	119/14 170/10	138/10
objection [87] 15/4	224/20 224/22	216/8 218/14 218/23	only [42] 4/7 4/21 7/9	other [68] 18/15 22/4
15/8 33/18 40/8 40/10	offered [2] 26/6 75/25	221/3	7/11 11/16 12/20 16/1	30/6 32/10 32/16 32/20
42/20 43/17 45/7 47/6	offering [1] 18/15	old [38] 12/7 12/8 20/4	17/6 21/1 25/7 27/24	32/25 33/8 33/11 33/24
47/20 47/21 51/15	office [10] 5/14 20/8	20/7 24/22 26/10 26/11	43/22 56/5 62/13 77/5	34/2 34/16 35/1 40/21
51/16 53/10 59/9 61/13	97/4 159/1 196/4 196/6	26/25 27/7 67/24 67/25	85/20 99/9 105/21	40/24 55/24 62/3 78/10
61/14 65/20 66/1 71/8	211/5 213/15 216/10	79/13 117/25 121/17	108/11 108/20 112/14	83/13 83/16 84/4 85/10
74/10 74/11 78/16	216/19	124/21 124/22 124/24	113/9 117/25 120/14	85/21 95/24 105/6
82/19 83/15 87/6 97/7	Official [3] 1/24 227/1	125/1 128/12 129/11	130/20 142/10 142/20	105/11 107/7 110/9
97/25 111/21 112/3	227/16	130/23 146/13 146/19	142/24 143/17 145/4	119/22 123/17 124/9
113/10 114/4 114/15	often [3] 96/2 196/4	147/2 147/4 147/5	149/5 149/8 151/24	125/4 125/13 128/13
117/14 118/9 118/11	215/6	147/8 147/11 154/16	161/12 170/9 170/10	130/18 130/21 131/21
120/18 121/10 121/19	oh [16] 46/18 72/24	154/20 156/21 157/4	170/14 174/2 174/3	132/18 132/20 133/1
131/13 133/20 135/25	103/2 105/14 130/23	157/13 159/21 167/10	175/25 177/10 186/14	134/24 142/16 146/20
136/18 136/22 137/23	163/1 165/13 182/1	168/21 168/23 169/22	open [2] 9/23 39/17	149/23 150/13 150/25
142/12 143/24 144/22	199/10 199/12 201/15	Old Emmorton [3]	opened [5] 9/24 10/2	152/21 158/14 159/23
144/25 145/18 145/19	214/18 218/11 219/16	147/2 147/5 147/8	10/5 10/6 168/10	160/3 160/4 160/18
147/21 147/24 149/25	222/5 222/18	older [1] 73/15	opening [2] 6/21 10/3	173/1 173/2 174/13
150/15 152/22 155/11	Ohio [3] 25/22 25/24	once [16] 4/8 15/3	operational [2] 46/6	176/1 181/15 191/6
155/19 156/13 164/17	26/2	15/13 16/3 19/18 26/4	46/7	198/11 199/7 201/16
167/2 168/12 168/13	okay [133] 4/9 24/17	33/16 36/10 102/18	opine [1] 188/2	201/25 214/11 217/5
169/11 169/23 169/25	25/10 26/21 39/18 44/1	141/6 149/4 170/9	opinion [12] 49/12	221/19 222/18 224/21
182/13 182/15 182/18	52/12 54/3 54/21 55/4	200/24 201/3 208/22	76/22 107/16 111/25	225/10
182/23 182/25 183/2	55/7 55/19 56/10 56/19	217/16	118/5 150/9 150/24	others [3] 41/11 41/17
183/4 183/6 183/10	56/25 58/8 58/12 59/25	one [113] 3/15 5/1	155/8 167/17 169/24	152/21
183/12 185/12 185/22	60/18 63/11 63/16	7/11 8/6 10/14 13/23	183/8 189/1	otherwise [2] 112/24
186/7 189/8 189/24	63/24 64/12 67/15 73/6	16/2 16/4 17/24 18/7	opinions [6] 97/1	188/1
190/5 191/13 203/21	79/23 80/24 86/3 95/6	18/25 19/5 24/23 24/23	109/13 109/18 109/21	ought [2] 10/10
204/7 207/14 207/21	97/1 98/8 99/9 101/2	25/4 30/2 33/5 34/12	110/13 128/20	102/18
objections [3] 19/21	101/17 101/21 101/24	43/8 44/7 46/1 48/20	opponent [1] 5/4	our [46] 3/6 6/14 9/20
172/17 190/24	105/2 105/15 107/9	52/14 57/11 59/21 60/1	opportunity [4] 26/7	10/3 10/3 11/17 17/3
objects [1] 15/10	107/14 108/17 109/17	60/11 62/2 77/23 78/1	26/9 176/21 178/4	21/18 21/20 21/22 22/5
observation [1] 16/10	110/10 110/13 111/3	78/7 78/12 78/25 84/12	opposed [1] 177/2	22/17 30/11 51/15
observe [1] 95/25	111/5 111/8 111/10	90/9 93/5 94/17 98/20	opposing [1] 3/13	51/20 55/12 70/2 85/13
obtain [4] 25/14 25/16	112/24 113/20 113/24	100/18 100/19 102/3	optimistic [1] 21/4	86/18 86/19 86/23
25/23 26/1	115/20 115/24 116/16	103/16 103/23 103/23	Optimum [5] 133/19	87/20 91/24 116/4
obtained [2] 25/19	116/19 116/24 117/7	106/14 107/4 110/14	133/21 134/4 134/5	168/13 170/18 174/2
	118/13 120/1 120/17	110/15 110/24 112/15	134/6	175/20 176/20 177/8

<p>O</p> <p>our... [16] 177/8 177/9 177/9 179/1 180/16 180/20 180/20 181/12 182/7 191/25 215/11 215/11 222/13 223/12 223/12 225/17</p> <p>ours [1] 11/2</p> <p>ourselves [2] 8/13 91/24</p> <p>out [71] 3/24 4/14 5/13 5/24 8/21 9/11 12/14 15/6 15/11 15/18 15/24 16/11 16/25 19/19 20/21 21/13 27/23 41/24 42/10 55/21 66/11 75/11 75/23 86/8 88/20 92/2 93/9 95/24 101/22 106/11 116/21 123/12 124/6 124/6 124/7 125/9 125/9 125/15 131/23 138/24 139/3 143/7 150/6 154/22 155/18 161/19 161/21 166/17 171/23 172/12 174/11 175/17 175/18 176/9 176/25 177/3 177/3 177/13 186/12 192/11 196/15 199/10 200/17 208/15 213/15 214/2 214/25 220/10 221/18 222/22 223/19</p> <p>outside [2] 111/18 117/20</p> <p>outstanding [2] 192/11 199/10</p> <p>over [45] 3/17 7/21 7/21 15/4 17/15 24/1 24/8 29/1 29/1 29/5 30/12 32/13 34/17 37/14 37/15 37/17 37/19 37/20 39/17 39/20 39/22 53/24 59/1 59/1 65/25 75/25 85/7 97/4 98/4 100/6 123/4 128/11 130/1 132/23 173/16 173/25 174/7 174/16 175/7 177/15 177/16 178/24 180/14 211/22 212/16</p> <p>overcorrection [2] 135/19 135/24</p> <p>Overfilled [1] 40/5</p> <p>overflowed [1] 39/11</p> <p>overflowing [2] 38/17 38/20</p> <p>overlap [5] 120/22 134/23 135/9 135/17 135/18</p>	<p>overlapped [1] 135/2</p> <p>overnight [1] 218/22</p> <p>overrule [12] 66/1 112/3 114/15 118/11 147/24 155/18 156/13 183/10 185/12 185/21 189/8 189/24</p> <p>overruled [38] 47/7 47/7 59/9 71/9 83/21 98/2 112/9 112/25 112/25 113/12 114/10 118/12 120/5 121/11 133/22 136/2 138/1 142/14 143/4 144/2 150/2 150/16 152/23 168/16 183/2 183/5 183/18 184/16 184/18 185/25 186/19 189/6 189/11 189/13 189/19 189/21 190/22 191/6</p> <p>overseas [2] 179/22 180/11</p> <p>own [1] 202/5</p> <p>owner's [1] 211/10</p> <p>Oyer [5] 45/22 45/23 53/22 54/8 56/24</p> <p>P</p> <p>P-A-T-E-L [2] 23/13 67/6</p> <p>p.m [10] 55/22 56/4 122/25 123/1 173/8 173/9 193/1 193/2 206/3 226/4</p> <p>packaged [1] 56/2</p> <p>page [42] 2/2 57/5 58/24 59/11 59/12 60/3 61/25 62/2 89/15 93/1 93/2 94/12 96/13 96/14 98/24 98/24 101/7 116/11 130/2 149/2 156/17 156/20 156/23 157/12 157/13 157/21 158/3 158/14 159/16 159/16 160/16 161/1 162/7 162/12 162/23 164/25 166/15 178/10 198/24 199/6 223/22 227/9</p> <p>Page 2 [3] 57/5 93/2 162/7</p> <p>Page 3 [2] 58/24 59/11</p> <p>Page 4 [3] 59/12 93/1 94/12</p> <p>Page 5 [4] 96/14 98/24 157/12 157/13</p> <p>Page 6 [2] 98/24 157/21</p> <p>Page 9 [8] 149/2 158/3 160/16 161/1 162/12</p>	<p>162/23 164/25 166/15</p> <p>pages [5] 62/4 62/7 94/3 157/8 157/20</p> <p>Pages 5 [1] 157/8</p> <p>paid [1] 149/9</p> <p>painkiller [1] 154/3</p> <p>PAM [9] 1/6 2/11 15/14 125/20 170/10 170/25 193/7 193/13 206/2</p> <p>Pamela [1] 199/25</p> <p>Pandora's [1] 225/9</p> <p>paper [1] 53/23</p> <p>paragraph [23] 55/20 58/23 94/12 95/10 98/23 114/24 115/4 115/13 119/3 142/1 149/3 158/4 159/8 160/16 160/25 162/12 162/24 164/10 164/24 165/10 165/17 166/15 166/18</p> <p>Paragraph 12 [1] 94/12</p> <p>Paragraph 14 [1] 142/1</p> <p>Paragraph 15 [15] 114/24 115/4 115/13 149/3 158/4 160/16 160/25 162/12 162/24 164/10 164/24 165/10 165/17 166/15 166/18</p> <p>Paragraph 16 [1] 98/23</p> <p>part [15] 27/8 47/23 52/15 85/20 120/8 120/9 120/11 120/21 132/8 133/7 158/4 159/1 180/5 185/16 201/18</p> <p>Part D [4] 120/8 120/9 120/11 120/21</p> <p>participate [1] 211/22</p> <p>particular [6] 31/12 51/16 56/15 200/18 211/19 217/18</p> <p>parties [3] 4/3 123/8 155/16</p> <p>parties' [1] 112/6</p> <p>parts [2] 86/7 126/7</p> <p>party [5] 16/2 85/20 85/21 85/21 89/14</p> <p>party's [1] 88/23</p> <p>Pascale [16] 123/22 125/11 126/14 142/6 170/10 174/24 175/10 176/1 176/2 177/11 178/17 179/14 180/6 180/7 215/5 221/18</p> <p>passages [1] 87/7</p>	<p>passed [1] 14/6</p> <p>passport [1] 42/16</p> <p>past [7] 4/6 4/8 14/19 19/19 20/25 51/5 187/16</p> <p>paste [1] 110/15</p> <p>pasting [1] 148/13</p> <p>Patel [98] 2/3 2/5 13/16 13/17 23/2 23/8 23/13 23/19 23/21 24/11 24/18 24/25 25/1 25/11 26/19 27/10 28/20 29/23 31/2 33/22 34/21 35/4 35/8 35/9 36/5 36/20 37/11 37/22 38/24 39/8 40/12 40/13 41/3 42/1 42/24 43/9 43/22 45/14 45/25 47/2 47/9 47/12 47/23 47/25 48/9 48/25 49/6 49/7 52/7 54/4 54/21 55/22 55/24 56/25 57/8 57/9 57/13 58/4 58/12 59/12 59/13 59/19 60/3 60/6 62/19 64/22 66/4 66/18 67/2 67/12 67/14 67/15 67/17 67/18 68/1 68/7 68/14 68/18 68/20 69/4 70/16 70/24 71/3 71/17 72/7 72/14 72/19 72/21 74/13 74/21 75/15 75/16 76/2 78/12 78/24 81/21 83/24 90/23</p> <p>Patel's [2] 59/14 61/20</p> <p>Patels [1] 181/18</p> <p>patient [24] 34/13 35/12 36/10 36/13 36/18 37/2 37/15 37/16 56/1 58/13 58/17 59/20 62/23 75/20 77/2 77/5 77/6 77/7 77/17 77/8 77/9 77/14 77/19 77/21</p> <p>patient's [4] 27/22 27/25 37/9 77/10</p> <p>patients [20] 27/14 31/9 35/13 35/16 38/3 38/12 38/14 55/12 55/15 56/8 57/1 57/2 57/11 57/14 58/1 72/10 72/11 72/12 77/4 223/23</p> <p>patients' [1] 28/8</p> <p>pause [2] 174/2 183/23</p> <p>pay [9] 52/15 139/25 140/2 140/3 142/23 142/23 149/22 149/23 150/4</p> <p>paying [1] 149/18</p> <p>payor [13] 119/22</p>	<p>120/2 120/7 120/7 120/10 120/10 120/12 134/24 135/3 150/4 150/14 150/19 150/19</p> <p>payors [12] 93/25 94/19 94/21 95/3 96/5 96/6 98/11 99/2 119/17 138/15 149/8 151/2</p> <p>PDE [2] 129/3 129/5</p> <p>Peggy [1] 213/7</p> <p>penalized [1] 86/23</p> <p>pending [2] 144/12 173/25</p> <p>Pennsylvania [9] 12/7 24/19 140/7 140/10 146/23 147/2 147/5 147/20 151/1</p> <p>people [26] 12/8 12/14 12/15 13/6 13/7 17/16 18/9 18/21 19/19 30/18 32/17 35/25 36/2 40/24 42/14 46/1 69/24 70/3 196/3 196/19 196/21 199/24 200/17 201/22 201/25 213/4</p> <p>per [8] 57/16 96/15 117/1 130/7 137/9 148/17 157/19 157/24</p> <p>per-pharmacy [1] 137/9</p> <p>percent [3] 131/3 135/2 138/21</p> <p>percentage [2] 135/16 135/18</p> <p>perfect [1] 138/21</p> <p>performed [5] 80/10 81/24 82/2 116/21 135/22</p> <p>performing [2] 112/21 133/11</p> <p>perhaps [5] 15/17 132/18 133/1 176/10 219/9</p> <p>period [3] 21/22 79/8 79/11</p> <p>Permissible [1] 13/14</p> <p>permission [1] 173/14</p> <p>permit [1] 40/15</p> <p>permitted [2] 22/19 122/4</p> <p>Perry [1] 211/9</p> <p>persist [1] 186/7</p> <p>person [13] 7/9 11/22 13/22 17/1 27/21 49/14 67/18 76/24 181/15 196/13 196/14 196/22 212/5</p> <p>personally [1] 27/14</p> <p>perspective [3] 19/21 21/22 148/3</p>
--	---	--	---	---

P	68/10 68/13 70/10 70/11 71/12 71/23 75/19 75/24 77/8 79/4 79/7 79/13 79/20 80/24 81/2 95/22 99/5 104/16 129/21 130/18 137/9 143/25 144/4 179/1 180/17 180/20 188/23 222/13 PHELPS [15] 1/15 2/4 2/6 2/9 2/10 10/17 18/6 20/5 22/5 59/2 60/19 81/21 174/12 179/12 184/5 Phelps's [1] 174/16 phone [2] 172/22 180/9 photo [1] 46/12 photograph [1] 46/19 phrase [2] 7/15 205/14 phrased [1] 138/9 physically [1] 79/10 pick [9] 4/14 5/8 25/6 85/17 109/9 124/12 124/20 138/12 220/16 picked [7] 80/5 80/21 100/3 109/11 111/25 138/12 206/9 picking [1] 206/23 picture [5] 15/19 47/18 47/19 72/23 141/13 pictured [1] 73/7 piece [5] 209/21 214/23 214/24 217/18 224/24 piling [1] 38/10 pill [2] 134/23 160/6 pills [14] 95/8 95/9 96/24 102/5 104/20 104/21 105/23 107/18 120/13 120/13 120/14 120/14 142/18 224/16 pin [1] 20/18 PIP [1] 55/25 place [6] 32/10 65/19 66/6 66/7 66/11 132/23 places [1] 31/8 plain [1] 112/7 Plaintiff [19] 1/4 1/12 4/5 13/15 17/9 23/2 49/16 66/17 88/21 89/16 111/19 126/13 127/20 177/24 178/10 182/4 188/4 189/2 193/6 Plaintiff's [77] 21/11 38/23 38/24 39/3 39/4 39/12 39/18 40/3 40/7 46/5 47/2 47/17 72/20	72/21 73/8 73/8 73/11 73/17 73/19 73/21 74/9 85/15 85/25 88/2 92/25 99/18 101/6 102/14 102/25 104/8 104/12 108/11 114/18 114/23 116/2 116/14 116/25 127/12 127/19 127/21 128/1 128/4 128/6 131/4 131/15 131/25 132/13 134/16 136/21 142/2 156/16 158/3 158/8 159/2 160/15 161/2 161/9 161/23 162/3 162/23 163/4 163/8 165/21 168/9 168/19 169/17 169/19 170/8 172/1 172/6 182/3 184/6 184/9 198/10 199/6 206/18 206/20 Plaintiffs [1] 5/22 PLAINTIFFS' [1] 2/2 plan [4] 17/15 90/11 126/12 222/22 plane [2] 126/10 170/18 planning [3] 19/14 85/6 221/4 plans [2] 110/3 161/13 play [9] 15/16 85/14 85/18 86/16 89/1 188/16 191/16 203/18 214/20 playing [44] 182/12 182/17 182/20 182/22 182/24 183/3 183/9 183/11 183/15 183/19 183/22 184/15 184/17 184/19 185/2 185/5 185/24 186/1 186/3 186/20 188/18 189/7 189/10 189/12 189/14 189/16 189/18 189/20 189/22 190/1 190/3 190/7 190/9 190/11 190/13 190/15 190/17 190/19 190/23 191/2 191/9 191/11 191/19 204/4 plea [18] 51/8 53/24 54/4 54/18 55/9 56/12 56/14 56/20 56/22 57/6 57/18 59/2 60/3 60/7 60/21 60/25 61/2 91/3 plead [20] 43/11 43/13 43/14 44/2 44/7 44/8 44/25 46/1 47/4 47/14 53/5 53/9 53/16 53/18 53/20 75/3 75/6 75/8	75/10 75/14 pleading [2] 45/3 55/7 please [45] 3/2 22/25 23/3 23/5 23/10 23/21 36/21 50/13 52/1 53/14 55/20 59/12 62/18 66/16 66/20 66/24 67/4 68/21 73/21 89/11 93/1 101/6 102/1 102/2 113/13 113/15 118/14 137/2 138/3 145/6 155/24 156/16 159/3 160/16 185/23 193/5 193/11 198/13 199/8 203/20 208/16 208/18 209/14 209/17 213/1 pleasure [1] 178/10 pled [10] 43/9 44/11 44/20 45/14 45/20 47/25 53/3 53/25 54/11 54/15 plenty [2] 13/5 13/16 plight [1] 125/3 Plumtree [31] 27/3 27/5 27/6 32/4 32/5 35/5 35/11 55/4 55/8 55/9 55/22 56/1 56/5 58/17 69/10 69/12 69/15 70/8 70/20 70/24 79/18 83/2 129/19 130/13 130/20 146/13 146/19 154/19 154/21 167/10 218/3 plunger [1] 171/10 plunges [1] 171/9 plus [4] 6/7 97/23 158/19 167/18 point [29] 7/16 20/17 22/19 59/8 59/8 70/2 88/5 100/20 105/19 105/20 106/3 109/10 128/25 131/5 164/4 164/5 181/8 181/8 181/9 184/5 186/12 200/25 201/7 204/19 205/4 220/11 220/21 222/5 223/19 pointed [3] 3/24 174/11 199/10 pointing [1] 220/10 points [2] 175/9 200/17 Police [1] 214/16 policies [2] 213/24 213/25 populate [1] 104/14 portion [6] 85/18 85/25 88/2 104/12 140/20 140/23 portions [2] 85/17	86/10 position [9] 9/20 21/18 22/17 51/20 59/5 87/20 176/8 187/24 194/6 positive [1] 169/7 possible [10] 15/3 16/20 24/15 93/6 111/16 116/5 123/19 139/18 139/20 192/21 possibly [2] 188/15 223/16 post [3] 3/19 127/14 224/11 post-indictment [1] 224/11 Post-it [1] 127/14 post-Lating [1] 3/19 potential [1] 181/9 potentially [2] 17/21 139/4 power [5] 64/22 64/25 65/3 65/12 65/24 practices [1] 144/5 Pragna [1] 66/18 Pragnaben [4] 2/5 24/25 25/1 67/1 preamble [1] 97/7 preceding [1] 129/9 prediction [1] 219/1 prefer [1] 4/12 preindictment [1] 221/13 preliminary [1] 188/21 prep [2] 20/16 140/21 prepare [2] 12/3 224/4 prepared [13] 96/14 99/20 101/14 107/1 108/12 109/17 116/20 159/1 178/7 185/11 187/8 188/5 224/3 preparing [1] 128/20 preschool [1] 25/5 prescription [14] 32/8 37/14 41/24 55/25 75/22 79/21 79/22 79/22 80/4 80/8 80/23 83/7 83/8 110/3 prescriptions [27] 31/4 31/5 31/7 31/8 31/18 31/18 31/19 31/23 32/7 32/11 32/18 32/21 32/25 38/9 38/11 38/13 39/24 39/25 55/13 55/16 56/5 56/7 56/9 57/14 58/13 58/19 131/23 present [9] 1/17 85/2 85/21 116/13 195/14 195/20 200/17 201/24
----------	---	--	---	--

P	177/13 184/14 191/15 present... [1] 201/25 presented [3] 93/15 97/23 203/6 presently [1] 184/2 presided [1] 97/4 pressure [1] 43/13 presumably [1] 51/7 presumption [1] 152/8 pretrial [1] 19/12 pretty [8] 4/13 61/2 103/12 145/16 160/1 194/24 202/12 222/15 preview [1] 125/6 previous [1] 163/10 previously [4] 136/11 146/4 168/13 221/8 price [12] 75/21 129/2 129/3 129/4 129/5 129/15 130/7 130/11 130/15 130/17 154/24 154/25 primarily [3] 210/24 217/17 217/21 primary [2] 120/9 120/12 printed [2] 106/13 106/22 prior [5] 195/1 210/9 211/25 212/10 216/11 prioritized [1] 174/16 private [7] 133/19 139/25 140/2 140/3 142/23 142/23 211/6 probable [4] 6/18 7/2 19/1 156/3 probably [19] 46/24 85/9 86/7 86/12 88/14 94/4 103/7 103/12 111/9 122/10 137/15 162/5 162/21 176/2 179/18 211/23 212/13 212/18 222/2 probative [1] 156/12 problem [17] 3/7 3/7 4/17 9/5 16/12 21/13 124/14 150/9 150/14 150/18 173/4 173/4 176/24 177/2 181/3 217/3 223/2 problematic [2] 188/1 224/25 problems [1] 175/20 procedure [3] 85/19 111/22 181/1 proceed [17] 3/22 6/11 19/22 20/19 20/21 52/1 122/5 122/7 123/11 125/8 125/16 126/11 127/8 173/12	proceeding [1] 11/5 proceedings [1] 227/8 process [5] 40/24 40/24 122/17 159/5 187/19 produced [6] 152/5 152/9 152/12 152/16 152/18 153/18 product [12] 111/22 112/4 112/6 112/24 113/1 113/11 144/8 144/16 144/18 145/15 211/11 225/3 products [1] 145/25 profanity [3] 62/12 63/1 63/2 professional [1] 137/21 profiles [1] 56/1 program [13] 6/6 93/12 96/2 119/18 120/7 134/11 134/13 149/11 149/13 149/15 149/19 150/14 151/1 programs [1] 140/9 projector [1] 127/15 promises [1] 49/15 propensity [1] 7/14 proper [3] 112/2 113/1 185/13 proposal [2] 11/3 177/24 propose [1] 178/18 proposed [1] 176/20 proposing [1] 176/19 prosecute [1] 20/9 prosecuted [1] 14/7 prosecution [1] 10/5 prosecutors [2] 176/22 206/3 protected [2] 51/18 111/22 protocol [1] 209/11 prove [2] 7/1 16/3 provide [8] 29/7 89/20 89/21 103/25 153/25 155/8 194/13 224/15 provided [7] 28/21 28/25 29/1 29/15 107/2 149/19 186/12 providing [2] 29/2 188/20 public [3] 10/25 45/23 61/20 publish [1] 86/1 pull [1] 4/7 pulled [3] 103/15 154/22 170/12 purchased [1] 95/8	purchases [1] 146/6 purported [2] 162/25 163/4 purpose [1] 135/21 purposes [14] 15/9 38/23 39/6 46/5 51/19 73/18 95/14 98/15 99/20 107/16 108/12 139/9 147/7 221/4 pursuant [1] 227/6 pursue [2] 25/21 68/11 push [1] 218/9 pushed [2] 4/6 14/6 put [57] 5/6 6/7 7/12 8/10 8/12 11/20 12/10 15/25 16/5 19/20 20/22 21/8 22/2 22/3 22/12 39/2 39/7 46/10 64/22 65/25 71/13 75/5 75/10 84/10 85/3 89/23 90/4 92/25 94/21 99/6 101/4 104/20 104/21 104/22 106/6 108/10 110/24 118/25 127/14 130/10 137/10 141/24 158/7 162/16 167/14 174/24 180/24 181/24 195/21 196/16 200/24 200/25 204/23 219/3 222/12 225/14 225/17 puts [2] 5/10 188/23 putting [7] 6/18 7/8 16/13 86/3 180/4 209/11 213/22	139/15 139/17 141/20 145/1 145/5 145/21 146/4 147/23 150/15 152/19 155/13 155/16 161/21 164/17 164/18 164/21 168/2 168/4 168/25 182/25 185/13 188/3 188/17 204/9 207/23 208/4 209/15 209/15 209/18 questioning [2] 64/16 190/25 questions [44] 10/23 10/24 24/11 24/12 24/13 34/7 40/12 48/25 49/6 49/17 59/6 61/17 66/13 67/14 68/7 72/7 73/3 74/12 74/14 75/16 78/18 81/6 81/21 81/22 84/8 89/7 91/15 106/2 133/9 148/18 148/20 149/24 151/21 154/14 160/17 160/20 160/21 166/21 167/11 187/22 191/5 210/13 212/25 221/10 queued [1] 175/19 qui [1] 204/24 quick [2] 86/8 184/4 quickly [15] 64/17 81/15 94/10 94/13 100/16 148/9 156/6 157/2 159/5 160/1 162/4 163/25 166/15 185/15 192/11 quiet [4] 24/12 24/13 73/3 73/5 quit [1] 76/17 quite [5] 14/18 15/15 22/13 143/21 174/9 quote [8] 93/13 97/19 157/25 158/10 158/17 159/17 167/18 208/3 quotes [1] 93/14 Quotient [1] 69/3	104/22 129/21 159/11 159/25 161/8 162/18 166/22 171/18 202/24 220/12 Raynor [1] 16/18 reach [1] 208/15 read [38] 3/20 9/9 9/23 10/13 55/20 55/21 57/6 57/20 58/23 59/11 62/18 64/1 93/3 113/14 113/16 115/2 118/16 118/17 121/25 137/1 137/3 138/3 138/4 145/6 145/8 145/21 145/22 156/17 157/1 159/23 184/24 197/23 198/3 200/14 209/17 209/19 212/9 212/17 readdressing [1] 132/9 reading [11] 60/20 104/21 105/3 105/12 146/23 146/23 147/2 147/5 159/11 159/25 212/15 ready [6] 87/9 87/10 89/19 173/17 173/18 175/19 real [6] 138/12 166/23 184/4 205/17 225/8 225/8 reality [2] 138/22 149/11 really [19] 4/2 7/6 21/14 22/13 56/8 62/17 72/9 72/9 78/4 87/8 105/8 130/25 141/12 154/16 154/17 157/7 173/15 180/1 223/21 realm [1] 195/16 Realtime [1] 227/5 reask [1] 33/19 reason [15] 4/2 42/9 46/14 60/6 60/7 88/17 91/6 100/17 152/4 174/3 174/3 174/12 174/15 175/10 175/13 reasonable [3] 137/20 147/14 224/2 reasons [2] 16/16 53/18 rebook [1] 170/18 rebut [14] 7/17 8/3 8/11 8/18 9/4 10/7 10/10 12/9 12/16 12/18 16/15 17/17 18/14 18/16 rebutts [1] 18/25 rebuttal [51] 4/17 4/24 5/2 5/16 5/22 5/23 6/1
----------	---	---	--	---	---

R	record [25] 21/10 23/5 23/10 24/14 30/5 39/6 51/17 51/20 61/19 61/24 66/24 84/20 87/17 96/8 102/13 121/17 129/18 162/1 165/23 172/9 177/23 181/24 184/1 193/11 193/12	relatively [2] 12/19 186/15	reply [2] 4/5 5/16	response [1] 11/14
rebuttal... [44] 8/10 8/17 9/3 11/12 11/18 12/2 12/4 12/22 12/23 13/9 13/12 13/14 13/19 13/24 14/7 14/23 16/1 16/14 17/14 19/4 21/14 21/19 21/25 22/8 22/10 22/18 49/22 51/21 51/25 84/14 84/22 125/8 125/14 125/15 125/22 170/14 176/7 178/4 179/2 179/2 179/9 180/18 181/11 181/17	records [2] 5/18 10/25 recovered [1] 224/16 recross [2] 2/10 168/3 red [1] 118/4 redacted [1] 87/18 REDDY [16] 1/3 1/17 26/6 30/12 45/19 69/5 70/17 75/17 76/20 76/22 77/16 78/13 79/15 81/3 81/3 193/7 Reddy's [1] 75/19 redirect [9] 2/4 2/7 2/9 64/19 81/15 81/18 118/12 136/24 148/23 reduce [3] 142/17 163/7 163/9 reduced [1] 61/3 reevaluation [1] 136/15 refer [2] 93/4 115/10 reference [1] 58/9 referenced [1] 109/4 referred [1] 96/2 referring [4] 198/17 202/13 205/15 205/17 refill [2] 55/13 56/4 refills [2] 55/25 218/4 reflect [6] 10/13 21/9 56/5 137/5 137/13 137/17 reflected [3] 135/22 137/6 151/10 reflects [1] 59/13 refresh [8] 58/21 198/14 200/12 203/19 203/23 204/6 205/24 206/24 refreshed [1] 208/8 regard [1] 123/5 regarding [1] 224/14 Registered [1] 227/4 regret [2] 45/4 45/12 regroup [1] 223/16 regularly [1] 194/24 regulars [1] 202/1 regulations [1] 227/10 relate [1] 3/18 related [8] 98/5 119/11 119/17 134/10 173/13 205/20 224/9 224/10 relative [1] 141/1	relator [2] 199/18 204/24 relevance [7] 42/20 45/7 98/1 117/16 117/18 121/10 143/1 relevant [4] 156/3 156/5 168/11 185/11 reliable [2] 14/3 139/21 relied [1] 93/9 rely [3] 13/25 97/5 97/13 remain [1] 66/20 remaining [2] 170/9 221/16 remains [1] 95/6 remember [36] 30/21 30/22 34/25 51/15 53/21 55/7 57/4 73/25 80/22 81/4 81/7 89/16 94/24 107/13 115/23 119/3 123/22 132/8 140/19 141/6 142/7 154/16 154/22 160/20 160/23 161/5 161/18 167/12 198/4 203/2 203/4 203/14 215/24 216/21 218/5 219/21 remembers [1] 83/19 remind [3] 64/5 92/7 218/19 reminds [1] 86/20 remove [9] 110/25 135/19 136/4 150/11 150/12 163/18 163/21 165/3 165/9 removed [7] 96/9 99/13 109/22 113/4 134/17 151/7 151/7 removes [1] 100/13 removing [5] 103/9 105/24 135/23 137/19 150/22 renewal [1] 42/17 renovated [3] 29/13 29/16 29/18 rent [1] 29/3 repeat [7] 52/9 57/19 65/5 68/21 76/10 133/24 145/5 repeatedly [1] 174/1 rephrase [6] 33/20 114/6 152/19 161/21 164/19 167/3 replay [2] 8/24 203/21 replaying [1] 9/3 replenishment [2] 93/12 149/15	report [23] 10/8 10/8 10/11 89/13 93/1 93/2 94/3 94/7 94/12 95/11 96/13 98/23 98/24 102/25 104/13 107/1 108/24 118/22 118/23 120/17 120/18 135/6 172/2 reported [3] 1/23 135/13 227/8 reporter [16] 1/24 24/14 73/5 113/14 113/16 118/17 137/3 138/4 145/8 145/22 209/17 209/19 227/1 227/4 227/5 227/16 reports [4] 171/13 212/10 214/17 214/19 represent [4] 186/24 187/9 188/6 221/9 representation [6] 39/8 47/3 47/13 73/24 74/6 172/25 representative [1] 57/10 representing [1] 50/15 request [2] 11/2 86/17 requested [8] 113/16 118/17 137/3 138/4 145/8 145/22 156/6 209/19 require [4] 12/5 85/21 88/7 188/13 required [4] 3/19 6/5 10/15 72/10 requirement [1] 76/4 requirements [1] 88/18 reschedule [1] 4/8 research [1] 194/25 reservations [1] 125/25 resort [1] 120/7 resources [1] 174/19 respect [14] 10/7 25/20 27/11 33/22 54/12 79/23 83/4 87/5 90/23 96/4 131/11 164/10 180/16 195/24 respectful [1] 176/8 respectfully [3] 85/1 171/12 176/16 respective [1] 159/10 respond [3] 9/12 176/21 177/11 responded [3] 208/14 208/24 209/10 responding [5] 4/20 5/3 5/20 177/10 207/4	responsibilities [1] 216/22 responsibility [1] 195/16 responsible [1] 83/6 rest [6] 127/8 191/7 219/18 222/10 222/23 223/5 restate [1] 139/15 restore [1] 136/24 result [2] 204/25 209/9 results [1] 108/24 resume [3] 92/4 192/23 218/17 resumes [5] 50/11 90/19 123/2 173/10 193/3 returning [3] 126/21 126/23 127/1 returns [1] 118/15 reveal [1] 112/24 revenue [2] 140/18 140/20 reversal [3] 80/10 82/3 83/10 reversals [17] 33/5 33/12 33/16 33/17 33/23 34/2 71/1 79/24 81/22 81/25 82/2 82/11 82/17 83/5 83/13 84/1 84/5 reverse [14] 12/12 32/7 32/12 32/13 32/17 32/21 32/25 41/8 80/6 80/8 80/21 80/23 83/6 83/7 reversed [4] 12/13 32/9 34/6 224/17 reversing [1] 31/22 review [18] 119/6 121/18 128/5 129/19 133/7 133/16 149/4 153/5 156/21 156/22 157/13 157/21 159/9 168/21 169/22 189/3 209/13 215/10 Review 3 [2] 129/19 169/22 reviewed [8] 94/6 94/8 95/22 96/19 99/5 107/9 155/4 169/24 reviews [2] 95/15 95/20 revisit [1] 21/21 revoke [3] 64/6 64/7 64/9 Ridolfi [38] 7/22 12/11 12/13 13/5 14/1 14/4 32/1 32/7 32/20 33/3

<p>R</p> <p>Ridolfi... [28] 33/15 33/22 34/7 34/8 35/6 35/22 69/17 69/19 70/14 72/17 82/13 82/24 83/9 84/1 84/5 203/10 203/15 205/5 205/6 205/15 205/20 206/7 206/25 207/8 207/13 208/8 209/8 210/5</p> <p>right [323]</p> <p>right-hand [2] 117/2 129/1</p> <p>rise [12] 11/17 50/7 50/11 90/15 90/19 122/23 123/2 173/6 173/10 192/24 193/3 226/2</p> <p>risk [12] 107/22 107/23 136/5 150/9 150/20 150/22 151/4 151/7 161/11 164/13 165/6 165/8</p> <p>RMR [2] 1/23 227/16</p> <p>roaches [4] 30/12 30/13 30/19 30/23</p> <p>road [7] 26/10 26/12 27/1 27/7 146/20 147/9 147/11</p> <p>roadmap [2] 170/6 219/2</p> <p>Robert [7] 187/12 197/13 200/10 200/13 201/4 201/14 216/8</p> <p>role [16] 31/15 79/4 79/20 79/21 79/23 83/1 195/24 213/11 213/16 214/20 215/24 215/25 216/16 216/21 217/16 225/2</p> <p>Ronda [3] 1/23 227/4 227/16</p> <p>room [2] 29/8 29/11</p> <p>Ross [1] 199/19</p> <p>roughly [1] 174/2</p> <p>round [1] 173/22</p> <p>roundtable [5] 201/21 202/4 202/9 210/8 210/9</p> <p>row [4] 100/11 103/16 162/8 215/11</p> <p>row 220 [1] 162/8</p> <p>rule [12] 3/11 3/20 5/25 85/19 85/22 88/6 88/7 111/22 112/7 112/7 183/1 225/15</p> <p>Rule 602 [1] 183/1</p> <p>ruled [2] 8/14 19/17</p> <p>rules [1] 9/25</p>	<p>ruling [3] 7/5 179/4 191/8</p> <p>rulings [2] 16/23 17/2</p> <p>run [7] 31/3 37/21 123/12 124/6 124/7 125/9 171/18</p> <p>running [3] 122/12 202/7 217/17</p> <p>runs [1] 6/6</p> <p>rush [1] 170/17</p> <p>rushed [1] 12/20</p> <p>Russell [7] 97/3 97/5 97/12 97/15 98/13 110/2 138/16</p> <p>RX [5] 133/19 133/21 134/4 134/5 134/6</p> <p>Ryan [18] 176/21 177/11 201/16 201/18 216/1 221/1 221/5 221/5 221/20 222/8 223/13 223/22 223/25 224/1 224/25 225/1 225/8 225/11</p> <p>S</p> <p>said [66] 4/2 6/16 6/21 7/23 8/19 8/21 8/25 9/4 10/7 10/19 28/6 29/18 37/13 38/3 39/22 40/17 40/22 41/1 44/12 44/15 44/20 44/25 48/20 56/10 56/11 59/1 59/3 59/25 63/15 68/16 70/22 74/5 75/19 79/5 80/15 80/16 81/9 91/3 97/8 97/8 103/25 106/6 106/10 107/18 115/11 119/16 125/17 128/6 134/20 137/24 144/22 144/23 145/1 150/21 154/24 167/8 168/25 175/16 175/22 176/13 176/23 180/25 188/12 207/20 208/7 221/15</p> <p>sake [1] 122/7</p> <p>Sam [1] 34/12</p> <p>same [33] 28/16 30/15 33/23 48/22 53/7 73/13 74/2 75/11 85/16 117/7 120/12 122/1 127/21 127/25 133/15 135/22 144/18 150/8 150/14 153/4 153/7 156/6 159/17 162/13 163/25 166/3 176/3 178/10 183/4 191/8 195/6 214/23 216/17</p> <p>Sandra [8] 44/18 71/11 71/11 72/5 73/23 73/24 74/6 216/14</p>	<p>Sandy [1] 207/3</p> <p>Sandy's [1] 208/14</p> <p>satisfactory [2] 178/1 178/3</p> <p>satisfied [1] 177/24</p> <p>Saturday [9] 11/4 15/24 123/18 126/21 173/18 173/19 174/25 175/1 175/4</p> <p>saw [10] 3/10 78/9 104/8 109/17 132/20 133/1 156/8 156/9 158/24 191/21</p> <p>say [110] 5/1 6/18 6/19 6/22 7/23 8/20 10/9 10/14 11/21 13/1 14/2 16/14 16/15 17/6 24/4 24/9 25/7 26/17 26/22 28/1 28/3 28/14 34/10 34/20 35/1 35/24 37/3 37/23 38/16 38/19 39/15 39/19 39/23 43/5 43/6 45/13 48/7 48/15 48/19 48/21 49/9 50/4 56/15 59/3 60/1 60/1 60/15 64/4 70/5 70/11 70/25 71/14 71/15 71/17 71/17 71/18 71/18 71/21 72/1 72/1 73/13 74/21 76/7 76/19 76/24 82/4 84/13 91/2 91/19 97/18 104/23 106/19 107/21 112/13 117/17 119/10 122/20 124/25 131/10 131/20 131/21 142/3 144/24 150/25 151/1 159/25 160/2 172/21 173/1 175/22 178/9 179/23 180/7 182/1 188/11 188/19 196/7 196/8 196/13 196/22 196/23 197/8 200/20 201/3 202/4 202/8 204/7 212/18 223/11 224/4</p> <p>saying [20] 7/11 22/21 28/4 36/12 42/9 42/12 58/1 59/7 71/22 71/23 71/24 88/9 91/23 104/22 176/17 188/7 196/24 200/14 207/13 209/23</p> <p>says [33] 5/12 9/22 17/13 17/13 32/13 54/11 58/4 59/23 83/19 115/4 115/17 130/4 131/22 131/23 149/4 156/18 158/4 159/8 162/8 163/10 164/1 171/18 186/24 187/8</p>	<p>187/14 188/6 198/25 200/14 200/16 206/7 207/13 207/22 208/3</p> <p>scanned [1] 206/10</p> <p>scanning [1] 209/11</p> <p>scared [1] 19/19</p> <p>schedule [3] 19/25 123/6 178/14</p> <p>scheduled [1] 195/4</p> <p>schedules [1] 14/16</p> <p>scheduling [7] 3/23 4/25 15/11 15/15 17/11 177/20 225/16</p> <p>school [5] 25/5 25/11 25/12 25/14 103/19</p> <p>Sciences [1] 69/3</p> <p>scope [15] 65/20 92/17 92/18 93/6 93/7 110/20 111/18 111/20 111/25 113/7 133/7 133/14 137/17 143/1 190/21</p> <p>scrambled [1] 15/2</p> <p>scratch [1] 104/4</p> <p>screen [12] 46/13 46/21 72/23 73/7 103/21 119/1 130/10 131/15 171/11 199/11 203/20 213/3</p> <p>screens [2] 46/6 46/7</p> <p>scripts [1] 218/3</p> <p>scroll [3] 101/7 101/25 200/9</p> <p>scrutinized [2] 204/21 204/22</p> <p>SCS [1] 25/12</p> <p>search [19] 109/3 113/21 113/24 114/2 115/21 127/13 127/16 127/21 127/25 132/7 141/18 141/22 187/3 187/12 187/15 188/25 203/1 224/16 225/3</p> <p>seat [1] 193/10</p> <p>seated [3] 3/2 50/13 66/23</p> <p>second [9] 5/5 93/11 95/14 127/3 129/1 130/2 130/6 159/8 180/22</p> <p>secondary [6] 93/10 119/17 120/10 150/14 150/19 151/1</p> <p>Secondly [1] 3/23</p> <p>seconds [9] 51/24 182/5 182/6 182/6 191/17 192/1 192/3 192/3 192/6</p> <p>Secours [6] 31/10 37/15 37/16 37/25</p>	<p>37/25 38/13</p> <p>secret [1] 35/20</p> <p>section [2] 60/24 119/4</p> <p>Secure [1] 16/18</p> <p>see [101] 11/10 11/17 12/11 17/6 21/13 26/5 35/13 38/24 39/3 40/20 44/10 45/1 45/2 45/3 53/17 54/13 55/6 62/23 65/1 65/4 65/8 65/10 66/10 72/23 75/14 76/15 97/25 98/21 100/22 100/22 100/24 102/5 103/3 103/22 112/9 112/17 113/1 115/4 115/17 116/24 121/9 121/12 126/11 128/22 128/24 129/1 129/8 129/10 129/20 129/24 129/25 130/2 130/4 130/5 130/8 130/9 130/21 133/4 133/14 146/9 146/11 146/12 149/6 149/7 157/12 158/13 159/7 159/17 159/19 162/6 162/7 162/8 163/3 163/8 163/9 163/10 165/12 167/3 171/10 174/23 175/5 175/10 175/13 176/24 179/11 187/17 188/19 192/22 198/14 198/22 199/7 199/14 200/4 203/18 204/2 205/24 206/2 206/5 208/3 215/10 222/17</p> <p>seeing [2] 45/4 45/13</p> <p>seeks [1] 85/20</p> <p>seems [1] 9/9</p> <p>seen [16] 9/19 17/10 41/12 71/23 77/1 100/25 101/12 113/24 114/13 132/10 132/16 132/20 132/22 148/10 159/4 216/10</p> <p>segue [1] 27/17</p> <p>select [1] 85/24</p> <p>selection [2] 4/6 6/8</p> <p>self [1] 50/19</p> <p>self-incrimination [1] 50/19</p> <p>seminal [1] 17/2</p> <p>send [2] 40/17 70/22</p> <p>senior [2] 186/25 211/1</p> <p>sense [6] 142/1 147/19 148/2 148/4 180/1 219/17</p>
--	---	--	---	--

S	47/11 53/22 58/14 58/17 58/19 58/20 59/20 69/20 69/20 69/23 69/24 69/24 69/25 69/25 70/1 70/2 70/5 70/6 70/15 73/15 74/2 81/5 82/15 82/17 83/1 83/3 83/4 83/6 83/10 83/19 83/20 107/21 171/2 179/17 179/21 184/21 184/23 184/24 185/7 185/8 185/17 185/19 185/19 187/7 187/8 187/18 187/18 187/19 187/20 187/22 187/22 188/1 188/5 188/8 188/8 188/10 188/11 188/11 188/12 188/15 191/10 197/2 197/17 197/20 197/20 197/20 201/11 203/10 203/12 204/7 207/22 208/14 209/10 210/7 212/11 212/13 213/11 213/12 213/13 213/18 213/19 213/21 213/22 213/23 213/24 214/9 214/12 214/15 214/15 214/16 214/16 214/18 214/18 215/8 215/11 216/17 216/17 216/19 217/2 217/2 217/2 217/3 she's [7] 33/4 33/5 73/23 180/10 185/10 187/25 208/10 shelf [12] 143/8 143/16 143/20 143/22 144/8 144/16 144/18 145/25 151/11 151/12 151/13 151/15 shifts [1] 16/3 shock [1] 91/14 short [9] 11/21 12/19 15/6 158/5 163/12 164/1 180/19 188/22 192/15 shortage [37] 93/14 97/19 100/9 100/11 100/12 100/23 103/3 104/20 109/15 109/19 117/4 117/25 129/8 129/11 129/15 131/23 137/21 138/11 138/13 142/25 143/18 144/10 144/20 146/13 146/22 155/2 157/25 158/10 158/17 159/18 163/4 165/16 166/6 166/9 166/18 166/23 167/20	shortages [14] 109/23 138/7 145/11 149/5 157/15 162/25 166/17 167/9 167/11 167/18 168/23 169/9 187/2 188/23 shortly [1] 205/3 should [43] 11/5 11/11 12/12 13/8 13/9 16/25 17/1 19/2 21/19 22/18 29/21 34/10 35/15 39/1 49/22 59/7 70/25 73/2 84/15 88/12 101/9 103/17 103/24 104/23 104/25 105/3 105/12 106/19 115/24 117/17 121/4 165/22 172/4 174/16 180/7 182/7 198/7 206/11 206/15 209/12 218/9 218/12 218/13 shouldn't [1] 88/9 show [27] 8/4 36/14 38/22 42/12 46/4 55/6 72/19 73/17 77/14 99/18 100/25 101/5 101/6 104/6 109/15 114/17 114/20 116/8 119/23 128/3 129/13 135/21 154/14 155/7 161/23 205/22 225/11 showed [7] 53/22 109/18 116/3 116/16 127/20 159/13 216/5 showing [13] 46/14 46/16 46/18 54/3 93/4 99/20 101/15 114/23 120/25 129/17 131/25 142/4 205/24 shown [5] 9/18 103/3 132/5 187/13 225/7 shows [11] 5/19 13/9 19/1 19/2 19/3 89/14 101/19 101/19 102/18 129/12 156/11 sic [4] 77/25 165/16 176/21 178/3 sick [4] 56/8 72/9 75/18 76/13 side [15] 18/15 89/9 91/13 94/25 95/1 95/4 158/7 158/8 162/16 162/16 165/22 165/22 177/2 180/13 199/24 sides [2] 85/14 171/23 sides' [1] 170/23 sign [7] 14/6 36/11 36/14 37/2 53/21 53/23 56/14 signature [8] 36/7	36/8 36/10 36/13 36/18 36/25 37/9 60/4 signatures [1] 36/18 signed [1] 51/2 significant [18] 80/20 107/16 119/8 119/16 133/17 134/9 140/20 140/23 141/4 145/16 145/25 146/13 146/14 163/22 202/19 209/21 221/10 223/20 significantly [3] 130/17 144/9 144/20 similar [4] 98/22 107/17 116/20 150/18 simple [2] 7/3 103/13 simply [2] 15/25 180/20 since [8] 49/8 49/11 90/10 90/22 107/1 161/21 180/10 181/13 Sindhu [1] 225/6 single [4] 8/11 8/19 60/19 108/14 single-spaced [1] 60/19 sir [66] 9/14 23/3 23/5 24/2 24/4 24/15 24/17 25/17 26/4 27/1 28/9 28/14 29/19 32/22 36/8 36/15 37/23 38/4 42/3 43/6 44/16 44/18 45/11 46/2 49/9 51/18 53/15 58/7 60/2 66/14 155/25 156/25 160/8 170/3 172/6 179/7 193/20 193/25 194/9 194/11 197/19 197/22 198/6 198/9 199/9 199/20 199/23 200/1 200/6 200/8 200/11 201/2 206/4 206/6 206/8 206/12 206/14 208/16 211/14 212/2 212/4 212/6 212/20 213/6 218/14 218/23 sister [1] 75/18 sister's [1] 75/22 sit [3] 123/22 145/24 215/8 sitting [2] 123/24 124/3 situation [8] 7/11 19/18 19/18 25/8 30/1 78/10 155/9 180/10 six [5] 5/13 141/9 160/4 204/19 218/4 six days [1] 5/13 six years [1] 204/19 size [2] 163/7 163/9	skills [3] 214/14 215/7 216/12 skip [1] 94/5 slide [1] 222/25 slight [2] 177/14 225/16 slipped [1] 155/15 slow [1] 122/17 slower [1] 38/10 small [5] 121/24 130/25 154/17 181/8 181/8 smart [3] 215/18 215/21 216/6 Smith [47] 2/8 15/14 15/16 84/10 89/23 90/4 91/9 92/4 92/13 92/24 93/3 94/12 97/6 97/12 97/22 99/17 99/19 101/12 102/8 102/22 104/6 105/20 106/10 107/1 108/10 109/12 116/13 118/22 118/24 119/21 125/18 127/12 128/3 128/18 129/17 130/20 150/9 151/23 152/25 155/8 156/16 158/16 160/13 164/24 166/1 168/19 169/24 Smith's [2] 11/8 89/22 smoke [1] 117/23 so [306] so-called [4] 85/22 93/13 198/5 199/18 SOL [6] 155/10 158/5 158/14 158/18 159/17 160/18 Sols [1] 16/18 Soluble [1] 128/22 solution [4] 117/1 118/3 157/19 157/24 solve [1] 175/20 some [50] 12/14 12/14 20/17 21/8 22/8 27/20 27/23 28/19 31/9 34/3 34/7 37/13 38/10 42/7 45/17 45/20 46/14 63/6 67/14 68/7 70/1 76/3 76/16 76/17 83/7 83/15 86/7 87/6 89/25 94/5 114/2 114/9 150/13 160/17 170/11 172/10 172/19 174/5 174/9 175/14 177/14 186/13 195/13 196/5 197/25 217/20 217/22 220/11 220/17 224/12 somebody [11] 27/20 27/22 28/2 30/15 59/21 75/18 124/20 171/24
----------	--	---	---	---

S	sources [4] 139/19 141/9 141/14 141/23 South [1] 61/1 South Carolina [1] 61/1 Southeast [1] 12/15 spaced [1] 60/19 speak [10] 4/24 29/22 29/23 29/24 68/5 96/16 195/16 196/2 213/23 219/2 speaking [4] 3/19 5/3 120/6 207/14 Special [5] 195/17 198/14 200/20 200/22 223/21 specific [18] 107/13 114/11 130/13 136/3 138/14 138/18 142/7 146/8 152/18 153/13 153/15 153/25 154/10 160/20 196/2 205/17 217/20 224/18 specifically [14] 12/10 15/9 97/2 98/19 109/4 110/17 119/10 119/16 133/8 140/19 154/12 187/2 195/9 196/15 specify [1] 151/22 speculation [3] 143/24 143/25 169/11 speed [1] 212/14 spell [6] 23/6 23/9 66/24 67/3 67/6 193/12 spelled [2] 23/11 67/5 spend [5] 42/15 76/16 76/17 118/6 166/22 spending [1] 213/15 spent [1] 111/8 spin [1] 215/9 spinning [1] 215/19 spoke [2] 18/20 18/22 spoken [1] 203/10 sponsor [1] 64/5 spot [1] 155/8 spreads [1] 147/15 spreadsheet [17] 104/14 110/14 128/19 129/14 129/16 129/19 132/6 158/24 159/8 223/22 224/3 224/4 224/7 224/17 224/19 224/20 224/23 spreadsheets [6] 104/16 110/11 110/23 135/5 135/10 188/22 spring [5] 164/15 185/20 187/17 195/23 195/23 Square [2] 30/3 30/4	staff [1] 181/6 stage [2] 75/12 209/5 stages [1] 209/4 stamp [4] 37/15 37/16 37/16 121/21 stand [12] 5/12 6/22 7/25 14/2 15/13 16/7 16/11 39/2 84/10 91/10 176/4 193/10 standard [1] 188/12 standing [1] 66/20 stands [3] 61/4 87/22 87/22 start [12] 20/2 34/17 78/24 89/4 89/9 127/10 164/1 171/4 175/6 176/18 212/7 218/15 started [17] 40/25 41/1 62/22 69/6 75/25 76/3 76/5 76/6 78/2 90/10 92/15 151/24 176/4 191/4 191/5 194/1 194/5 starting [2] 57/7 175/11 starts [2] 98/23 149/3 state [9] 12/21 23/6 66/24 120/19 150/13 174/18 193/11 196/4 198/2 stated [3] 177/24 208/15 210/10 statement [16] 48/3 48/6 48/7 53/4 53/21 53/23 54/16 54/19 55/8 57/25 58/8 60/20 61/2 115/20 177/23 185/14 statements [1] 54/12 STATES [5] 1/1 1/14 25/22 227/5 227/11 states' [1] 150/25 status [3] 40/14 63/19 63/22 statute [3] 51/3 51/6 90/22 stay [4] 9/11 29/3 29/4 42/17 stayed [1] 76/15 stenographically [1] 227/8 stenographically-repo rted [1] 227/8 stenotype [1] 1/22 step [6] 19/22 66/14 84/9 84/16 101/5 117/20 stick [2] 140/16 143/15 sticker [1] 39/7 still [20] 4/11 9/8 13/4	14/6 14/9 20/18 75/4 75/7 89/22 92/7 95/23 103/9 109/15 109/19 109/22 144/4 154/20 174/25 181/17 195/18 stipulate [1] 122/5 stipulated [2] 60/24 155/6 stop [12] 14/6 41/13 49/20 53/14 69/7 76/9 76/12 87/4 89/4 117/21 122/3 124/7 stopped [1] 69/8 stopwatch [3] 88/3 89/4 89/9 store [23] 69/10 69/12 69/16 70/8 70/12 99/4 99/8 103/16 103/17 105/6 105/8 110/16 114/25 115/8 121/2 130/14 130/15 130/21 147/5 148/5 148/5 157/4 157/13 stores [7] 104/17 109/14 130/14 130/21 131/11 139/6 146/7 streamline [1] 101/1 streamlined [1] 88/19 Street [1] 1/24 strictly [1] 29/9 strike [2] 152/22 183/6 strong [2] 15/4 75/8 strongly [2] 51/23 177/2 structured [1] 212/19 stuff [3] 8/3 221/6 225/5 sub [1] 100/19 sub-tables [1] 100/19 subject [2] 112/2 187/23 submission [1] 91/13 submit [1] 102/17 submitted [4] 56/3 56/3 59/15 172/2 subpoena [1] 180/15 subpoenas [1] 180/13 substance [2] 112/16 218/20 substantive [12] 10/23 13/11 18/15 18/17 19/9 21/25 22/21 49/22 51/20 51/24 84/14 84/21 such [4] 111/25 179/8 180/18 209/8 suffering [3] 44/5 44/24 52/16 sufficient [1] 218/16 sufficiently [1] 105/19	suggest [5] 7/9 15/22 177/19 187/11 219/14 suggested [2] 75/18 187/15 suggesting [1] 187/2 suggestion [1] 122/18 summarize [1] 93/5 summary [1] 4/3 summer [4] 124/14 177/21 177/21 212/8 Sunday [5] 123/18 173/19 174/25 175/1 175/4 superstar [1] 171/13 supervisor [2] 213/8 213/13 support [1] 62/13 supporting [1] 45/24 supportive [1] 77/18 suppose [1] 220/10 supposed [9] 5/3 58/6 83/4 119/14 151/12 165/15 166/6 166/9 166/17 sur [1] 4/5 sur-reply [1] 4/5 sure [32] 24/16 55/5 55/13 58/23 85/11 89/20 96/8 106/19 115/3 118/10 121/25 134/2 139/17 139/24 141/21 143/14 156/11 157/1 162/1 162/15 170/25 177/17 197/4 197/6 204/2 210/7 213/24 215/10 215/19 217/2 217/10 223/11 surplus [29] 95/8 97/16 97/18 98/13 100/11 100/13 100/14 102/5 102/9 103/9 104/9 104/21 105/1 105/12 105/22 110/2 121/8 138/11 142/17 142/25 143/18 146/1 146/14 147/1 148/4 160/2 163/22 163/23 168/23 surpluses [7] 110/5 118/4 138/16 145/11 160/5 160/6 169/9 surprise [6] 10/16 17/6 17/9 18/17 22/18 181/14 surprised [1] 22/8 sustain [1] 190/5 Sustained [4] 42/21 78/17 82/21 97/9 sweet [1] 69/25 swipes [1] 5/18
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S	59/20 77/20 171/11 212/14 217/3 talk [23] 3/23 4/10 8/1 13/17 15/17 18/13 28/3 28/5 41/18 52/18 77/11 77/12 77/21 77/22 77/24 77/24 155/3 207/15 207/17 210/2 218/20 223/16 224/6 talked [8] 39/11 94/24 98/12 159/14 160/18 161/4 161/16 180/10 talking [24] 5/21 7/21 13/12 15/19 19/10 20/11 28/3 28/5 35/5 35/6 48/21 75/23 75/24 78/2 87/14 114/14 114/19 131/14 132/12 173/16 175/23 184/2 185/10 185/18 talks [3] 69/23 69/24 69/25 tam [1] 204/24 tardiness [1] 3/6 task [4] 186/13 202/21 207/2 217/17 tasks [4] 194/25 202/15 212/12 213/21 taught [1] 80/24 team [29] 132/24 132/24 187/1 194/20 194/23 195/11 195/12 195/14 196/18 197/1 197/13 197/15 200/13 200/21 201/1 201/4 201/13 201/18 202/11 202/16 202/22 209/12 209/12 216/16 217/4 217/7 217/8 217/15 217/16 teammate [1] 207/10 teammates [6] 194/13 194/16 194/17 194/18 194/19 202/19 teams [1] 217/5 tech [4] 24/3 24/5 24/6 86/22 technical [2] 181/2 192/10 technically [2] 5/3 180/14 technician [25] 5/17 24/1 31/6 31/17 31/19 32/11 33/12 34/3 34/12 34/15 58/7 59/24 70/3 70/10 70/11 79/4 79/7 79/20 80/8 80/25 81/2 81/4 82/2 83/7 83/12 technicians [16] 31/5 32/17 32/21 32/25	33/16 34/16 34/17 34/19 34/22 34/23 35/2 70/5 70/6 72/15 80/9 81/24 tell [31] 13/21 17/22 19/13 23/21 26/14 40/16 40/21 41/5 41/7 54/21 63/13 64/3 65/18 67/15 69/4 70/17 73/21 82/3 83/10 83/13 84/1 90/23 135/16 172/23 172/23 174/3 180/13 184/4 186/10 194/16 210/22 telling [7] 41/23 44/2 45/22 54/18 73/13 123/19 203/14 tells [1] 175/1 template [2] 188/11 188/12 tended [1] 38/7 tenure [1] 194/7 term [3] 5/2 7/15 35/11 terms [4] 94/21 96/21 101/23 217/4 terribly [1] 219/23 testified [18] 48/14 48/17 51/4 51/11 60/7 60/8 67/18 81/24 136/11 136/14 137/24 144/14 150/12 164/14 184/24 188/5 188/10 201/22 testify [9] 11/24 11/25 48/9 52/11 132/11 137/20 175/11 179/25 224/5 testifying [4] 11/11 18/8 50/20 176/18 testimony [54] 6/2 8/24 11/8 12/20 13/25 16/8 18/19 19/23 21/8 21/25 24/14 27/1 32/16 35/8 36/12 37/1 42/1 42/3 46/2 46/11 48/17 49/7 51/1 60/6 61/20 85/18 85/21 85/24 89/22 90/1 92/5 92/15 107/16 132/21 133/2 136/6 150/22 150/23 150/25 151/3 151/9 151/12 165/7 177/1 179/4 179/9 184/21 187/18 203/22 209/23 210/4 218/20 218/21 221/12 than [36] 11/9 12/1 17/4 17/18 20/4 20/7 45/18 69/24 70/6 73/15 74/2 77/9 90/12 93/25	94/18 94/19 96/6 98/13 103/8 104/22 110/3 110/9 119/22 132/18 132/20 133/1 159/11 159/25 161/8 162/18 166/22 176/1 201/15 211/23 220/18 222/18 thank [30] 3/15 23/14 52/2 66/14 66/17 67/7 74/18 75/15 81/14 84/7 84/9 84/16 84/18 84/24 92/3 93/2 102/3 106/23 148/18 160/8 169/16 170/3 178/4 184/5 193/14 215/13 218/14 218/23 218/24 223/18 that [949] that'll [1] 225/22 that's [170] 4/9 5/6 5/15 5/20 5/21 5/25 8/25 9/15 11/4 11/13 11/21 11/23 12/19 15/1 15/11 15/15 17/3 17/5 17/8 18/12 20/10 21/13 21/22 22/10 22/15 23/12 27/17 30/5 35/15 39/2 45/13 46/20 50/23 51/10 53/8 54/8 54/15 56/10 58/4 59/25 60/3 61/12 61/20 65/6 69/18 75/25 78/8 80/15 80/18 82/5 84/3 88/13 88/17 90/2 91/6 93/18 93/24 94/2 94/23 95/5 95/16 96/11 97/21 98/18 99/11 99/15 99/22 101/2 102/24 103/3 103/13 105/7 105/15 105/17 105/24 107/3 107/6 107/8 108/13 110/15 110/17 110/25 112/2 112/15 112/16 115/13 116/1 116/5 116/23 117/5 117/7 121/3 123/19 124/13 124/17 124/18 125/4 125/22 129/12 129/13 130/6 134/8 134/12 134/15 134/18 134/19 134/19 134/21 136/13 136/24 138/9 139/24 140/5 140/8 140/22 141/6 141/11 141/15 141/15 143/5 143/15 146/21 147/3 147/10 149/8 149/10 149/21 151/9 152/1 152/3 152/15 153/9 153/21 153/24 154/2 155/5 156/19 158/12 159/15	159/22 163/6 163/20 165/2 165/5 165/11 166/8 169/16 171/1 172/15 172/25 174/3 174/15 175/15 175/20 176/14 178/19 180/12 180/21 181/2 184/5 185/3 188/14 190/5 198/16 201/11 203/25 219/8 220/21 223/1 224/2 their [36] 5/4 6/19 7/14 8/12 11/2 13/24 14/16 14/24 18/25 21/25 29/4 35/14 57/1 57/2 58/2 67/23 71/13 72/10 77/10 77/11 77/13 77/22 85/4 86/9 86/18 86/21 88/12 91/18 91/24 126/13 140/20 140/21 140/21 150/13 175/25 219/8 theirs [3] 87/16 87/21 182/7 them [81] 4/4 9/21 12/5 12/20 12/25 13/2 13/3 13/8 13/10 15/2 15/3 15/14 17/22 18/17 21/13 22/2 22/3 22/6 22/7 22/7 22/12 25/5 27/15 29/1 31/8 32/13 34/13 42/8 42/10 55/17 56/8 56/11 56/16 56/17 56/18 56/19 59/24 69/25 69/25 70/1 71/12 77/8 77/10 77/11 77/11 77/13 77/15 85/5 85/5 85/8 85/11 86/22 88/7 89/21 96/15 96/17 110/24 119/11 124/1 137/11 137/18 147/20 160/18 162/16 171/14 172/4 175/12 178/24 180/13 180/14 180/15 181/12 191/7 197/25 198/3 201/24 212/18 213/22 217/9 220/3 220/8 themselves [1] 8/1 then [88] 4/3 4/5 10/9 12/16 12/25 15/14 15/14 16/15 24/12 28/24 29/5 31/5 38/3 39/19 42/12 42/15 42/18 43/12 50/18 53/17 61/5 63/13 68/11 70/11 73/3 73/4 75/7 75/24 79/18 80/6 80/7 90/5 93/11 94/19 95/7 99/4 99/13 100/13
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T	177/13 180/14 186/9 194/1 194/7 194/7 194/15 195/3 195/12 195/18 195/19 195/21 196/3 196/5 196/14 198/2 198/19 198/20 201/15 201/16 201/24 202/20 205/6 212/25 214/10 219/24 221/24 222/25 there's [57] 7/18 10/19 12/2 13/5 13/24 20/8 22/17 28/18 34/18 51/3 61/24 86/7 89/1 94/25 95/7 99/12 99/13 102/5 103/9 104/9 112/1 117/12 117/17 121/21 137/12 137/15 138/7 138/24 139/2 139/6 139/9 140/9 146/7 146/22 147/23 152/21 152/21 163/4 166/23 168/10 169/12 170/11 170/25 171/5 171/15 172/17 173/3 174/11 174/15 174/20 179/8 180/18 186/23 196/13 198/22 206/5 219/11 these [46] 3/21 9/7 9/18 9/19 9/23 12/3 12/4 12/22 15/5 16/22 17/16 18/7 18/9 18/21 19/9 19/13 19/17 19/20 21/8 21/11 32/11 42/25 53/17 59/21 99/9 100/8 100/15 100/18 100/19 119/9 137/10 137/16 155/16 160/22 160/25 161/10 164/24 166/25 166/25 171/12 185/11 188/24 191/5 200/17 217/11 220/17 they [199] 4/20 4/22 5/16 6/17 6/21 7/12 8/6 8/7 8/11 9/24 11/11 11/12 11/13 12/6 12/7 12/8 12/9 12/9 12/10 12/16 12/17 13/2 13/3 13/7 13/8 13/9 13/21 13/25 14/2 14/3 14/5 14/10 14/10 14/13 14/16 14/20 14/25 15/13 17/15 17/20 18/13 18/14 18/22 18/23 19/2 19/3 19/11 19/12 21/19 21/19 22/8 28/8 28/25 29/1 29/2 29/7 29/10 29/16 31/5 32/10 32/11 32/18 33/11 33/16 34/3 34/17	35/14 35/15 36/11 36/11 36/14 36/25 37/2 37/5 38/9 40/21 40/22 40/23 41/22 42/8 42/10 42/10 42/11 42/12 42/13 42/13 42/15 43/5 43/12 44/2 44/3 44/4 44/6 44/9 44/12 44/12 44/15 44/25 45/15 45/17 45/17 45/18 52/18 53/5 53/6 53/6 53/7 53/16 53/17 55/13 55/14 56/14 56/15 57/15 57/18 57/21 60/1 60/17 60/17 70/4 71/11 71/12 71/13 71/14 71/14 71/17 71/18 71/18 71/20 71/22 71/23 71/24 72/1 72/2 72/11 74/25 75/4 75/5 75/5 75/7 75/9 75/10 75/11 75/13 75/13 75/14 75/19 78/1 78/2 85/7 85/10 85/17 87/7 87/8 87/10 94/22 100/4 100/5 107/19 109/4 109/10 117/24 120/24 124/1 126/3 133/10 133/11 135/6 137/6 137/7 137/16 137/17 149/22 151/4 151/7 156/8 156/9 156/9 156/11 164/12 164/15 164/25 165/3 165/3 166/4 168/10 171/14 175/25 176/9 176/13 176/13 178/19 179/13 187/21 191/5 201/17 217/19 218/3 225/5 they'll [4] 15/6 25/5 45/1 178/19 they're [22] 8/9 9/8 11/25 13/2 14/23 17/16 17/17 18/16 21/14 21/15 21/24 32/11 34/3 44/8 55/14 56/21 87/9 99/12 118/10 160/4 178/25 180/14 they've [5] 7/21 7/23 13/16 13/18 17/18 thing [30] 3/11 5/1 8/6 8/11 8/19 11/16 15/10 22/4 27/21 30/13 46/20 64/1 66/12 77/5 88/25 89/2 112/15 112/16 143/7 157/7 159/11 163/25 165/22 177/12 177/16 179/9 180/18 216/17 223/19 225/10 things [29] 4/15 8/15	12/16 13/17 17/3 17/4 19/20 50/21 53/22 56/21 57/4 71/12 71/24 72/1 73/14 94/25 95/1 101/1 138/24 142/13 166/25 192/11 196/19 196/21 215/19 215/19 215/20 224/14 225/2 think [155] 5/5 6/13 6/15 8/8 10/14 10/19 11/4 12/1 12/14 15/10 15/13 15/15 16/12 19/21 29/18 38/3 44/15 46/7 48/13 50/22 51/5 51/23 52/14 59/6 59/7 74/4 80/21 84/11 84/12 84/15 85/6 86/7 86/12 86/16 86/23 87/20 87/25 88/25 89/1 89/16 89/23 89/25 90/2 90/8 94/4 94/9 95/10 98/4 103/8 103/13 105/19 106/11 111/5 111/24 112/2 112/3 112/8 112/25 114/8 115/24 119/1 125/12 130/17 131/1 137/12 137/15 138/9 138/23 139/1 141/11 141/15 141/20 144/3 145/23 146/3 147/17 147/25 148/2 148/4 148/8 157/8 158/21 159/25 161/4 162/13 164/3 164/20 168/9 170/14 171/5 171/20 171/24 172/7 175/7 175/15 175/19 176/1 176/8 177/12 178/19 178/24 179/1 180/19 181/15 181/17 184/4 185/11 185/13 186/11 186/14 187/6 187/13 188/3 188/4 196/9 197/5 197/17 197/25 198/20 201/11 201/16 205/12 205/12 207/2 207/20 207/24 208/7 209/25 210/7 212/13 212/16 214/8 214/10 214/22 214/25 216/9 216/17 218/3 218/4 218/9 218/16 219/16 219/20 220/3 220/10 220/18 220/22 221/3 221/7 222/2 222/5 222/14 222/16 223/10 223/20 thinking [1] 194/3 third [3] 16/6 123/24 157/23	this [327] this'll [1] 61/18 Thomas [3] 1/23 227/4 227/16 those [78] 5/14 11/10 12/16 14/5 16/16 17/3 17/4 18/22 18/23 18/25 23/9 24/24 31/10 32/9 33/11 34/5 35/13 37/5 39/11 40/3 49/15 53/22 55/16 56/14 57/4 61/6 66/7 74/14 81/22 82/2 87/23 88/8 88/11 88/18 90/25 94/16 96/19 100/3 105/21 107/4 107/9 110/14 118/4 120/9 120/10 120/13 120/15 121/6 125/14 126/19 135/5 135/9 138/17 140/14 141/14 145/12 149/8 151/5 152/20 153/16 153/17 158/16 158/21 159/13 160/7 161/6 164/11 164/12 165/10 166/11 166/17 167/11 172/11 182/8 194/10 202/4 202/7 203/4 though [3] 26/22 90/1 95/12 thought [12] 4/23 6/23 12/23 14/25 15/24 63/10 176/14 177/2 186/5 187/7 195/24 202/18 thousands [1] 160/6 threat [1] 63/22 threaten [3] 63/19 64/9 70/21 threatened [3] 45/15 74/24 225/7 threatening [3] 44/13 60/9 60/12 three [34] 3/10 5/14 5/19 12/7 14/21 16/23 24/23 29/24 68/6 76/25 79/7 79/10 88/1 126/2 141/9 148/15 148/16 160/3 160/19 175/5 175/18 175/25 201/15 202/1 208/2 219/8 219/19 219/21 219/25 220/3 220/15 221/14 221/17 223/6 three days [1] 16/23 three hours [3] 12/7 14/21 88/1 three-fourths [1] 3/10 three-year [2] 79/7 79/10
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T through [27] 6/10 13/15 16/6 31/13 37/21 49/12 59/8 62/18 85/9 85/24 92/16 94/5 94/9 103/18 104/14 110/22 137/5 156/24 157/14 157/22 159/23 162/4 179/21 212/15 217/20 220/14 222/10 throughout [1] 194/7 thrust [1] 221/12 Thursday [4] 20/23 175/6 220/16 220/16 thus [1] 192/8 time [105] 4/4 4/13 6/8 13/16 15/25 17/1 21/7 21/12 21/17 21/20 21/22 28/11 30/5 32/14 33/14 34/14 35/5 40/6 41/11 44/6 44/24 47/16 49/23 50/3 50/6 63/5 63/15 65/15 66/5 70/16 70/20 72/10 74/23 75/11 75/21 75/23 76/16 76/18 78/3 78/5 78/25 80/22 84/14 85/24 86/9 86/13 86/14 86/23 87/13 88/4 88/12 88/21 88/22 88/23 89/15 89/24 89/25 92/2 94/5 108/2 118/6 122/7 124/11 124/13 125/15 139/9 143/8 156/3 166/22 170/16 170/24 171/14 171/16 171/19 171/23 172/3 172/10 172/19 174/9 176/10 178/11 179/10 182/3 182/7 183/25 186/5 186/10 187/25 188/8 188/24 189/3 191/20 195/3 201/8 203/4 205/4 206/1 209/21 210/12 211/22 213/15 220/20 222/3 222/23 225/15 timely [1] 35/14 times [6] 8/14 59/4 129/15 181/25 214/9 214/11 timing [1] 14/10 title [7] 31/16 70/9 83/1 129/20 156/17 156/19 211/15 titled [1] 134/5 today [30] 3/22 12/5 14/12 19/17 25/1 25/8 51/1 51/9 52/8 52/10 52/20 90/1 116/17	125/19 125/20 126/8 153/12 159/4 171/5 171/6 173/16 175/19 180/23 180/24 185/18 187/22 192/14 192/18 192/22 225/13 together [5] 6/7 16/5 166/11 213/23 214/8 Tokofsky [12] 7/24 12/13 13/6 14/1 14/4 197/24 198/5 198/25 199/19 200/7 200/10 204/14 told [28] 4/1 11/6 11/9 13/7 22/6 32/18 41/11 42/11 63/24 65/11 71/12 75/5 75/9 75/13 75/24 82/11 82/17 83/16 84/5 85/7 97/19 116/19 175/2 177/15 178/2 204/7 211/12 223/13 tomorrow [32] 125/14 125/21 125/23 125/24 126/8 171/2 171/3 175/20 218/13 218/17 219/2 219/3 219/10 219/15 219/18 220/3 220/5 220/8 220/14 220/15 220/19 221/1 221/15 221/22 222/21 222/25 223/7 223/15 223/15 223/16 225/19 226/1 tone [2] 139/13 139/14 too [6] 82/5 164/21 167/1 175/23 216/23 222/23 took [10] 37/20 42/15 75/13 86/22 91/23 132/23 159/10 182/4 182/5 217/9 top [16] 39/14 39/15 39/18 39/20 54/9 59/11 108/23 109/2 109/6 127/14 129/20 156/17 156/17 157/15 159/18 199/21 topic [3] 112/11 112/14 112/16 total [8] 96/11 96/15 100/23 105/22 117/1 135/12 142/17 162/8 totals [3] 100/11 103/17 110/16 touch [2] 208/22 208/23 touched [1] 92/17 townhouses [1] 28/25 track [2] 178/23	219/12 traditional [1] 123/9 trained [3] 81/2 81/3 81/5 transcript [5] 62/2 107/4 171/25 227/8 227/9 transcription [2] 1/22 148/13 transfer [7] 99/13 139/10 146/5 146/25 147/20 148/3 148/4 transferred [3] 139/6 146/8 182/7 transferring [3] 5/12 147/1 147/8 transfers [43] 93/20 93/21 94/19 95/20 95/21 95/23 95/25 98/9 99/5 99/8 101/16 101/20 101/23 102/6 102/9 102/23 103/6 104/9 109/22 114/2 114/9 115/1 115/8 115/18 115/21 115/25 121/3 131/8 131/11 131/18 146/3 147/14 148/11 153/14 156/9 159/12 160/22 161/2 161/10 161/12 163/5 163/15 164/25 traveled [1] 174/18 treat [8] 27/12 27/14 27/18 27/19 62/20 77/4 77/16 119/24 treated [11] 30/15 34/8 34/9 34/20 69/20 69/20 70/5 70/6 119/24 120/25 137/7 treating [3] 78/1 78/3 137/18 treatment [1] 154/10 treats [1] 34/18 trial [62] 1/3 1/9 4/1 4/9 5/9 5/9 9/19 12/24 16/11 17/19 20/2 20/6 20/12 20/23 21/3 21/21 51/11 60/8 61/20 63/24 93/16 95/25 97/17 97/24 98/14 99/3 99/7 100/5 100/6 116/22 119/8 119/20 123/8 123/14 123/24 124/17 124/19 125/2 133/15 133/17 135/1 135/13 138/15 139/8 140/6 140/8 140/11 140/15 141/5 144/15 172/25 173/17 174/5 174/7 174/14 174/16 174/21	176/23 177/20 223/24 224/9 224/10 tried [3] 70/1 75/5 77/13 triggered [1] 204/15 trimmed [1] 8/13 trip [2] 124/10 222/17 trouble [1] 113/17 true [26] 5/13 21/24 36/15 48/7 48/18 56/25 57/13 57/25 58/12 59/3 59/19 63/16 64/12 88/17 101/22 108/16 109/12 109/14 109/21 141/6 144/14 146/25 149/8 160/22 187/3 227/7 truth [1] 71/20 truthful [2] 11/22 49/14 truthfulness [4] 18/14 19/7 49/13 76/23 try [14] 24/11 59/2 77/12 77/21 77/22 101/1 124/16 125/13 128/18 175/7 180/23 196/16 219/10 222/17 trying [16] 22/11 71/11 71/13 77/24 77/24 89/12 104/4 115/2 130/25 167/5 170/17 178/10 180/4 180/12 181/3 222/22 Tuesday [2] 20/24 180/2 turn [13] 5/11 15/6 21/14 31/2 93/1 94/13 99/17 125/9 149/2 155/24 177/3 198/13 199/8 turned [1] 203/1 Turning [1] 127/19 twice [1] 120/14 two [66] 3/25 6/24 9/8 10/4 11/8 11/20 12/4 12/16 12/23 13/24 15/5 17/7 19/6 19/17 20/22 21/1 21/3 21/8 24/21 67/22 71/24 79/12 86/19 87/14 90/11 91/21 93/5 94/16 98/20 99/4 99/9 99/23 100/7 104/17 105/21 107/2 122/11 124/1 124/18 125/4 125/13 131/2 141/8 151/24 152/20 155/16 158/16 158/21 160/3 161/6 166/11 170/20 173/3 174/2 174/20 176/3 179/2	179/12 181/10 198/7 199/24 208/2 222/1 222/12 223/11 225/17 two days [3] 21/1 21/3 124/1 two hours [3] 87/14 176/3 223/11 two minutes [1] 122/11 two years [1] 79/12 two-month [2] 174/2 174/20 two-week [1] 124/18 type [5] 41/14 51/4 51/5 51/25 211/17 types [3] 151/24 152/20 211/19 Typical [1] 5/8 typically [1] 196/6
U				
U.S [4] 97/3 97/3 119/7 216/18 U.S.C [1] 227/7 Uh [3] 74/7 76/8 209/7 Uh-huh [3] 74/7 76/8 209/7 ultimate [1] 156/12 ultimately [1] 42/24 unable [1] 153/24 unavailable [2] 13/15 126/19 undelivered [1] 59/17 under [20] 21/16 48/3 48/6 51/7 51/8 51/10 70/12 85/19 91/2 91/3 92/7 112/7 112/7 119/6 120/8 150/5 180/15 198/11 200/7 200/9 undercover [1] 217/24 undercuts [1] 16/21 underlined [1] 153/24 underlying [9] 117/5 132/19 136/4 152/2 152/4 152/17 153/11 153/15 153/17 underneath [1] 129/21 understand [32] 4/11 4/17 6/1 9/7 11/19 13/4 14/9 15/6 15/9 16/3 29/22 36/12 44/11 51/21 59/5 61/6 84/23 91/20 111/24 126/7 140/17 140/23 143/11 145/4 175/21 176/7 194/21 196/9 196/19 196/24 200/16 207/21 understanding [12] 52/7 85/13 96/7 97/15 97/21 113/18 151/3				

<p>U</p> <p>understanding... [5] 151/6 151/9 153/9 154/4 159/4</p> <p>understood [5] 104/2 106/23 118/13 204/18 204/24</p> <p>unfair [2] 174/1 177/19</p> <p>unfortunately [1] 222/15</p> <p>unique [2] 19/18 186/13</p> <p>unit [9] 121/7 129/1 129/15 130/7 130/11 193/22 211/13 213/10 216/18</p> <p>UNITED [5] 1/1 1/14 25/21 227/5 227/11</p> <p>units [13] 96/15 96/22 100/23 103/7 158/1 158/5 158/9 163/5 163/8 163/11 163/13 164/1 165/16</p> <p>University [4] 25/22 25/24 26/2 225/19</p> <p>unless [2] 161/25 225/1</p> <p>unlimited [1] 6/1</p> <p>unnecessary [1] 106/11</p> <p>unreliable [2] 14/5 14/6</p> <p>unrequested [1] 59/17</p> <p>until [27] 12/25 17/8 22/13 26/16 26/17 26/23 41/4 42/9 42/11 42/11 43/11 55/22 76/19 79/3 80/5 90/11 122/22 124/5 125/9 126/18 174/24 179/10 192/19 219/16 221/21 222/18 225/25</p> <p>up [81] 5/10 6/3 6/4 6/11 7/25 9/8 11/20 14/21 19/23 20/22 21/8 22/2 22/20 25/6 28/6 37/14 38/10 46/10 61/4 75/22 80/5 84/10 89/24 90/4 91/13 92/25 101/4 101/5 101/9 102/12 103/20 106/12 106/13 106/15 106/18 106/22 119/6 123/25 125/19 129/20 130/6 131/6 141/24 144/11 158/17 164/20 171/2 172/24 174/24 174/24 175/19 176/10 176/24 177/17 177/18 180/4 182/4</p>	<p>182/5 185/16 188/16 192/12 192/13 195/3 195/16 196/9 202/6 202/17 203/6 205/7 206/9 206/23 208/1 210/7 212/14 213/3 216/5 219/3 220/16 221/23 222/12 222/16</p> <p>upon [2] 91/24 93/9</p> <p>us [42] 4/6 9/2 10/11 15/24 15/25 16/5 16/25 17/17 19/11 19/13 28/15 29/17 30/16 34/18 34/19 34/20 34/21 41/23 42/11 42/12 54/18 54/21 62/24 75/18 79/25 80/2 85/16 86/21 103/18 104/6 104/11 120/1 122/7 135/16 172/3 172/8 176/6 181/10 201/15 211/12 214/22 217/9</p> <p>use [16] 12/24 46/8 62/12 62/14 63/1 63/3 63/19 80/13 107/19 112/21 116/5 144/12 144/13 156/1 187/2 193/24</p> <p>used [30] 10/20 12/9 27/24 28/1 28/24 35/10 36/8 36/22 37/12 44/3 63/6 63/22 80/14 94/19 108/22 108/24 109/3 109/6 116/14 119/23 132/7 134/13 139/5 187/4 187/11 187/14 188/11 188/12 203/23 204/1</p> <p>using [4] 5/22 96/16 130/11 194/19</p> <p>usually [3] 32/8 32/10 61/3</p> <p>V</p> <p>V-A-I-D-Y-A [1] 17/24</p> <p>vacation [4] 123/14 124/15 173/24 178/20</p> <p>vacations [1] 16/24</p> <p>Vaidya [5] 17/24 219/24 222/4 222/24 225/18</p> <p>value [1] 187/1</p> <p>varied [1] 223/23</p> <p>various [1] 36/5</p> <p>vegetarian [1] 29/9</p> <p>verbally [1] 61/4</p> <p>versa [1] 105/16</p> <p>version [4] 102/17 106/22 116/4 116/8</p>	<p>versus [4] 16/18 34/9 69/20 141/1</p> <p>very [93] 3/12 6/21 6/23 6/23 7/17 8/2 8/13 8/17 8/23 9/6 9/12 10/2 10/2 13/6 13/6 15/23 15/24 16/4 16/10 17/2 17/2 22/11 23/1 27/12 27/15 27/19 28/17 29/25 32/15 34/11 34/13 40/25 42/22 44/5 45/12 46/25 49/14 49/14 54/24 61/9 61/14 64/17 65/15 66/5 66/7 66/11 69/25 75/19 75/20 76/14 76/24 77/7 77/13 78/3 81/15 84/3 111/25 125/3 128/16 128/25 143/12 143/12 159/16 164/18 171/7 178/6 181/6 181/7 182/10 184/5 187/18 187/23 188/1 188/21 192/4 199/16 214/18 214/18 214/19 215/12 215/12 215/18 215/21 215/21 216/13 216/17 216/21 217/2 217/3 217/14 220/21 221/9 221/9</p> <p>vice [1] 105/16</p> <p>video [49] 85/2 89/13 89/16 172/2 182/12 182/17 182/20 182/22 182/24 183/3 183/9 183/11 183/15 183/19 183/22 184/15 184/17 184/19 185/2 185/5 185/24 186/1 186/3 186/20 188/18 189/7 189/10 189/12 189/14 189/16 189/18 189/20 189/22 190/1 190/3 190/7 190/9 190/11 190/13 190/15 190/17 190/19 190/23 191/2 191/9 191/11 191/19 204/1 204/4</p> <p>view [3] 122/19 174/2 215/20</p> <p>VIJAY [4] 1/3 1/17 76/20 76/22</p> <p>violates [1] 183/1</p> <p>violation [2] 112/4 113/1</p> <p>Vipin [5] 23/2 67/17 67/18 76/14 90/23</p> <p>Vipinkumar [2] 2/3 23/7</p> <p>visa [8] 40/15 63/19</p>	<p>63/21 63/22 64/6 64/7 64/9 76/4</p> <p>visit [1] 44/7</p> <p>vociferous [1] 51/15</p> <p>volume [5] 93/10 140/3 141/1 141/4 142/17</p> <p>vs [1] 1/5</p> <p>W</p> <p>waist [1] 174/19</p> <p>wait [6] 8/20 10/9 125/14 179/10 207/19 222/5</p> <p>waiting [3] 125/10 173/20 174/24</p> <p>waived [1] 50/20</p> <p>wake [2] 90/25 91/7</p> <p>walk [4] 31/13 103/18 110/22 222/9</p> <p>walked [1] 137/4</p> <p>walks [1] 16/2</p> <p>want [74] 4/14 8/12 10/13 22/1 22/2 22/3 22/4 24/2 27/22 28/3 28/3 28/6 29/3 29/3 32/24 34/7 35/4 35/8 36/5 36/20 37/11 37/21 38/22 40/19 46/4 46/10 53/6 53/6 60/15 60/17 68/7 71/14 73/17 84/10 86/1 87/7 88/4 89/3 91/13 92/22 94/13 96/8 100/16 100/25 114/6 121/25 122/8 139/18 139/19 140/16 144/13 146/9 150/21 151/23 158/23 162/1 162/4 162/13 167/22 170/18 177/16 177/19 177/23 177/25 178/12 180/25 181/1 196/1 203/8 205/2 205/22 218/15 218/19 222/7</p> <p>wanted [18] 4/4 4/5 8/15 22/15 66/6 71/18 71/18 71/20 76/16 110/13 135/8 136/15 173/13 184/1 205/5 209/8 219/4 223/19</p> <p>wanting [4] 72/1 205/20 206/25 207/9</p> <p>wants [5] 77/5 78/14 106/16 118/6 155/12</p> <p>warning [1] 70/2</p> <p>warrant [17] 109/3 113/21 113/24 114/2 115/21 127/13 127/16 127/21 127/25 132/7 141/18 141/22 187/3</p>	<p>187/12 187/15 188/25 224/16</p> <p>warranted [1] 215/10</p> <p>was [447]</p> <p>Washington [2] 42/17 174/18</p> <p>wasn't [10] 53/12 59/20 63/16 64/12 97/19 185/18 195/3 196/6 202/7 209/25</p> <p>waste [1] 86/13</p> <p>wasted [2] 86/13 222/23</p> <p>watch [1] 203/20</p> <p>watching [2] 62/25 132/10</p> <p>way [34] 3/5 7/2 17/19 33/22 34/20 37/17 41/4 41/18 47/24 60/22 69/23 86/20 90/2 118/1 123/9 130/1 131/21 147/15 161/9 162/17 162/20 162/22 169/12 171/9 171/15 178/14 181/17 191/8 195/21 199/13 200/24 206/22 212/21 215/20</p> <p>ways [3] 98/16 188/5 215/9</p> <p>we [406]</p> <p>we'd [1] 171/17</p> <p>we'll [34] 26/21 45/23 50/5 88/20 88/21 88/22 88/22 89/8 90/10 90/14 92/2 106/6 112/9 122/22 123/11 124/7 125/9 125/18 125/20 127/6 127/6 172/12 179/10 179/11 180/15 180/23 192/20 192/23 192/23 218/17 220/16 220/17 223/16 225/25</p> <p>we're [50] 3/3 5/21 6/16 7/2 7/11 8/11 9/15 10/18 11/7 11/7 16/1 16/6 17/10 19/12 20/11 21/5 38/9 38/14 86/3 89/13 89/20 90/1 91/9 114/19 123/20 123/24 124/3 124/5 125/5 125/6 125/7 125/10 125/16 126/4 126/10 146/16 172/18 172/24 173/17 174/21 176/6 176/9 176/19 179/3 181/6 194/19 203/18 220/4 220/11 223/5</p> <p>we've [41] 7/17 8/3 8/4 8/10 8/24 10/20 11/6 11/16 14/3 16/16 16/17</p>
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W	183/10 187/10 188/7 189/1 194/6 195/21 197/8 198/4 200/24 201/19 201/25 203/4 204/23 206/22 208/17 220/9 220/12 221/25 222/24 223/8 223/14 went [15] 18/20 47/25 75/22 76/14 76/16 76/17 79/18 92/16 104/14 106/9 143/11 197/5 197/9 201/21 218/6 were [204] 3/25 7/24 8/15 9/18 9/22 10/2 11/8 11/9 11/12 12/13 12/24 13/6 14/2 14/4 14/4 14/6 14/16 14/19 18/23 19/11 22/8 22/12 26/17 27/6 30/4 33/16 34/23 35/1 36/6 36/6 36/7 36/13 37/5 37/12 38/16 38/17 38/19 38/19 39/9 39/22 40/19 41/13 41/17 42/2 42/6 42/25 43/5 44/2 44/12 44/12 45/20 46/1 51/25 52/17 52/20 53/1 53/25 56/2 56/2 56/3 56/5 56/16 57/1 57/2 57/13 57/14 58/13 60/14 60/20 63/7 63/9 63/14 63/16 65/7 65/15 65/15 65/18 66/4 66/5 70/11 71/11 71/12 71/13 71/14 71/17 71/22 71/23 71/24 71/24 72/1 72/1 72/11 72/13 73/14 74/22 74/24 74/25 75/23 77/23 78/2 79/7 79/14 79/16 81/6 84/4 85/5 85/7 86/23 93/13 94/16 98/15 98/19 99/1 99/9 99/10 99/23 100/4 100/5 107/1 109/10 109/19 112/21 113/7 113/7 113/9 116/13 119/11 119/23 119/24 120/14 120/24 120/25 123/23 133/18 134/22 137/7 138/15 138/16 139/25 140/2 140/14 141/10 141/19 141/23 142/15 142/15 142/16 149/24 151/1 151/14 151/21 153/25 154/14 158/9 158/16 158/23 159/13 160/13 160/17 160/19 160/21 160/22 161/7 162/3 164/9	165/15 166/21 167/8 167/11 181/11 186/5 186/12 187/14 187/21 192/2 192/6 194/7 194/10 195/6 195/18 195/19 196/3 198/2 200/17 201/13 201/16 201/18 201/22 201/24 202/1 202/15 202/23 210/22 211/22 214/1 214/2 214/2 216/22 217/12 218/5 222/20 223/10 223/13 224/16 weren't [5] 57/15 60/14 78/9 87/10 149/8 what [321] what's [36] 9/16 9/16 11/15 11/20 22/16 43/15 61/22 72/19 73/17 77/12 77/22 77/25 80/20 105/11 117/15 127/21 127/25 138/11 141/13 151/10 156/19 156/23 157/12 157/15 157/20 157/23 157/25 162/9 166/5 166/9 168/20 180/24 206/16 206/16 210/25 217/4 whatever [13] 40/17 48/19 49/15 53/21 53/23 66/10 71/12 71/22 71/23 77/18 80/4 126/21 216/6 wheelhouse [1] 195/15 when [155] 3/24 5/18 12/2 13/7 16/21 17/1 22/12 24/9 24/11 24/13 28/1 28/3 28/5 28/7 28/11 28/22 28/24 29/5 30/4 30/5 30/18 31/25 32/3 32/6 32/7 32/13 32/18 34/2 34/14 34/16 34/20 35/5 35/24 36/17 37/8 37/14 38/16 38/19 39/11 39/15 39/22 40/13 40/16 40/19 40/20 41/3 41/4 41/7 41/13 42/5 43/5 43/9 45/4 45/5 45/20 46/1 47/25 48/6 48/9 48/11 48/14 48/17 48/21 51/7 51/11 52/17 52/20 52/24 55/12 56/2 58/8 59/3 65/15 65/15 66/4 66/9 68/13 68/16 69/4 69/7 69/12 69/15 69/19 70/8 70/17 70/21 70/24 70/25 71/17 72/1 72/13	73/4 73/7 73/25 75/16 77/7 77/14 77/23 78/6 79/2 82/3 83/10 83/19 83/20 89/4 89/8 89/21 91/12 91/15 96/9 97/18 101/15 102/5 104/8 104/16 105/21 110/1 110/5 111/25 112/21 116/13 120/14 123/12 124/7 128/4 132/2 132/8 142/5 144/15 144/19 147/15 152/25 155/16 163/5 163/15 163/18 163/21 171/10 174/17 178/16 179/13 183/25 187/22 191/5 195/6 195/9 197/6 197/15 198/14 198/19 200/12 201/11 212/7 212/9 214/9 whenever [6] 32/8 66/12 77/20 79/25 80/1 80/3 where [40] 8/16 11/2 24/18 25/11 25/20 26/4 28/22 41/17 68/9 68/18 78/3 79/10 85/17 85/20 100/4 101/19 107/17 109/11 118/22 119/4 119/21 120/7 138/15 148/6 149/3 149/4 151/23 158/4 158/23 158/24 163/10 166/4 170/16 174/2 179/16 179/20 195/20 208/3 210/22 221/24 whereas [3] 98/10 99/6 176/19 Whereupon [5] 50/9 90/17 122/25 173/8 193/1 whether [22] 7/6 10/21 21/22 21/24 30/22 64/25 65/1 65/7 100/12 112/11 112/14 115/20 138/7 144/4 145/11 185/18 187/21 188/13 196/18 208/21 215/10 222/20 which [33] 6/15 16/19 16/20 20/1 30/23 37/18 49/19 61/1 89/14 90/12 92/25 93/1 95/25 99/7 100/10 100/11 114/12 115/2 119/14 120/18 125/18 127/13 127/19 128/4 137/18 144/11 153/12 153/18 158/20 161/14 177/17 212/22 225/3	while [2] 81/3 214/5 whistleblower [15] 198/5 199/19 203/11 203/12 203/15 204/15 204/20 205/5 205/15 205/21 206/25 207/9 208/4 208/9 210/6 white [6] 34/8 34/11 69/21 69/24 70/3 70/6 Whittia [1] 30/9 who [58] 5/17 5/17 5/18 7/13 11/8 12/8 12/23 13/6 13/7 16/25 17/16 17/20 20/12 24/24 31/4 31/22 33/5 33/15 33/15 47/4 47/14 56/8 56/22 58/1 60/11 62/25 67/18 72/10 72/14 73/11 73/13 73/21 77/16 79/14 80/9 80/24 81/2 84/4 89/4 89/8 97/4 171/11 173/24 179/12 192/16 200/15 201/17 201/21 204/15 204/20 211/2 211/8 212/3 213/4 214/2 216/10 219/2 220/23 who's [7] 18/4 18/5 25/3 67/16 174/17 207/5 213/7 whoa [3] 43/19 43/19 43/19 whoever [3] 86/10 177/17 177/18 whole [18] 10/6 20/14 64/1 78/14 86/1 88/25 89/2 99/7 100/10 106/8 124/13 124/14 124/14 157/7 159/11 195/14 196/18 217/4 wholesale [1] 7/19 whose [1] 89/14 why [51] 4/9 8/10 9/15 11/10 11/17 14/16 15/1 17/5 21/5 28/14 34/1 35/15 42/10 43/5 44/11 45/21 52/7 52/10 60/6 60/7 63/13 64/3 65/23 66/4 66/6 76/9 76/12 80/12 85/11 87/9 87/10 89/20 92/24 104/6 104/22 109/9 111/25 117/19 133/6 133/13 141/15 148/8 159/24 160/9 162/24 172/13 174/12 174/15 175/10 175/13 220/7 wife [12] 24/25 26/5 29/8 29/9 42/9 42/12
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W	103/6 103/9 136/3 141/13 162/17 166/4 169/25	work [47] 4/10 12/9 14/16 20/3 24/3 24/7 26/4 27/3 27/7 31/25 33/8 40/15 44/4 68/23 69/2 69/3 69/9 69/16 74/21 76/12 79/2 79/10 82/24 90/5 93/6 93/7 93/13 111/22 112/4 112/6 112/24 113/1 113/11 141/3 173/21 174/25 175/1 175/4 180/15 181/3 191/5 203/3 211/4 212/1 214/5 215/1 220/17	85/1 85/7 85/14 85/23 86/8 86/8 87/8 87/8 90/7 93/2 95/8 98/11 98/12 98/21 106/5 107/19 108/17 109/14 109/22 110/4 110/4 110/15 110/17 111/5 112/3 112/23 113/21 114/17 115/10 115/22 116/5 117/4 117/6 117/20 119/25 120/25 122/15 123/23 128/19 135/16 135/22 136/4 137/6 138/23 139/1 139/15 142/17 143/21 144/3 144/9 144/12 144/20 145/9 145/14 145/15 146/1 147/1 147/17 148/2 148/6 148/8 150/5 150/8 150/9 150/12 150/14 150/19 150/23 150/23 150/24 151/4 151/6 151/7 151/15 151/16 151/19 152/6 152/8 153/15 155/7 156/2 156/16 161/11 161/11 161/15 164/14 165/9 167/1 167/20 169/17 170/13 171/20 173/22 174/19 175/14 176/4 176/6 176/18 178/8 178/18 179/23 179/24 183/10 185/21 189/8 189/24 190/4 192/17 194/16 194/22 194/24 195/1 195/4 195/16 195/25 196/11 199/11 202/10 202/15 202/20 202/20 210/8 212/12 212/18 212/24 213/14 213/14 213/19 215/8 217/11 219/7 219/14 219/19 220/10 220/22 221/4 223/21	wrote [5] 56/19 127/20 127/24 197/20 206/9
wife... [6] 44/3 44/9 44/13 53/6 66/9 222/15 Wilkinson [25] 43/15 44/18 71/11 72/5 73/23 73/25 74/6 123/23 125/10 126/14 170/9 174/24 175/10 176/1 176/2 177/10 178/17 179/25 180/4 208/21 208/23 208/24 209/10 216/14 221/18 will [67] 9/2 10/14 22/7 24/15 32/13 38/9 45/4 45/12 75/10 75/14 75/20 77/8 77/10 77/11 77/12 77/12 77/19 77/21 77/22 80/6 80/7 85/4 86/11 86/16 87/13 89/4 89/7 102/12 102/14 102/17 106/15 122/7 122/21 123/12 123/15 124/6 125/23 126/16 155/9 155/14 155/20 155/20 160/1 167/6 170/8 177/17 178/12 179/3 180/11 192/16 219/2 219/2 219/5 219/24 219/25 221/1 221/8 221/8 221/12 221/17 221/21 221/22 222/4 222/5 222/7 223/9 223/12 will-call [1] 170/8 willing [3] 175/2 177/5 177/6 willingness [1] 29/3 window [3] 4/6 4/8 6/11 wins [1] 177/18 wipe [1] 166/17 withdraw [15] 145/19 182/15 182/18 182/23 183/13 183/16 184/20 184/22 184/23 185/4 189/23 190/8 190/10 190/24 191/10 withdrawn [18] 182/19 182/21 183/14 183/17 183/20 183/21 185/1 185/3 189/15 189/17 189/25 190/2 190/12 190/14 190/16 190/18 191/1 191/14 withheld [1] 202/18 within [2] 132/6 195/15 without [15] 6/19 40/10 47/21 61/14 62/3 72/10 74/11 82/23	witness [71] 9/3 13/11 13/18 13/19 13/22 13/23 18/4 18/5 19/11 22/9 22/25 23/4 39/2 43/19 46/19 50/4 50/15 51/16 51/17 52/17 53/14 59/6 66/15 66/16 66/19 66/22 81/8 84/15 84/19 92/6 117/17 117/18 117/22 118/14 118/15 122/8 125/8 127/9 139/12 168/1 170/1 170/4 170/6 171/11 176/20 177/9 178/13 180/1 180/18 181/16 183/7 184/2 192/13 193/5 193/9 193/10 203/13 203/22 203/22 207/16 207/18 210/12 218/8 218/12 218/19 218/25 219/11 219/16 223/6 225/5 225/6 witnesses [79] 2/2 3/25 4/18 11/8 11/10 11/13 11/21 11/24 12/3 12/4 12/17 12/22 12/23 14/3 14/24 15/5 16/24 17/7 17/14 17/17 19/4 19/10 19/13 19/14 20/22 21/8 21/11 21/19 21/25 22/6 22/9 22/10 22/13 22/23 123/12 124/6 124/7 125/7 125/10 125/13 125/14 125/16 126/2 126/13 170/9 170/20 173/24 174/18 175/17 175/18 175/25 176/9 176/25 177/3 177/13 179/2 179/12 181/1 181/10 181/11 217/13 219/8 219/19 219/22 220/1 220/2 220/13 220/15 220/18 220/25 221/15 221/19 222/2 222/10 222/12 222/21 223/6 223/15 225/17 woke [1] 14/21 won [1] 52/14 won't [5] 122/6 181/13 181/18 191/13 219/23 wondering [1] 90/8 word [2] 5/22 71/13 words [9] 62/3 62/14 63/3 63/3 63/4 63/6 63/10 128/14 224/21	work [47] 4/10 12/9 14/16 20/3 24/3 24/7 26/4 27/3 27/7 31/25 33/8 40/15 44/4 68/23 69/2 69/3 69/9 69/16 74/21 76/12 79/2 79/10 82/24 90/5 93/6 93/7 93/13 111/22 112/4 112/6 112/24 113/1 113/11 141/3 173/21 174/25 175/1 175/4 180/15 181/3 191/5 203/3 211/4 212/1 214/5 215/1 220/17 worked [48] 26/22 26/25 27/5 28/23 32/3 32/6 35/25 36/2 40/13 41/3 69/4 69/12 69/15 69/19 70/8 70/12 70/24 76/5 76/24 76/25 77/17 79/13 79/15 79/16 79/17 82/6 82/9 82/13 187/19 193/21 195/9 195/19 196/3 211/9 213/4 214/8 214/24 215/6 215/14 215/22 216/1 216/8 216/9 216/14 216/20 217/5 217/8 217/18 worker [1] 216/5 workers [2] 69/20 69/21 workers' [1] 211/10 working [30] 12/8 26/11 34/23 35/2 40/19 58/17 69/6 69/7 69/8 70/16 74/23 75/25 76/3 76/6 76/7 76/9 77/23 81/3 83/9 111/8 181/6 195/6 197/13 202/25 203/5 209/6 212/7 214/23 215/17 217/14 working-class [1] 12/8 works [1] 106/20 worms [1] 225/8 worse [1] 70/6 worth [5] 45/8 133/23 186/18 189/2 189/4 would [177] 4/11 8/6 18/23 20/7 21/2 21/10 28/7 28/11 29/12 29/13 30/17 32/17 32/20 32/24 33/15 34/15 36/14 36/24 37/2 39/13 39/19 40/3 40/17 40/22 41/18 48/25 49/24 55/6 57/1 61/10 62/10 62/12 62/14 62/16 64/3 64/4 75/5 80/9 82/3 83/13	85/1 85/7 85/14 85/23 86/8 86/8 87/8 87/8 90/7 93/2 95/8 98/11 98/12 98/21 106/5 107/19 108/17 109/14 109/22 110/4 110/4 110/15 110/17 111/5 112/3 112/23 113/21 114/17 115/10 115/22 116/5 117/4 117/6 117/20 119/25 120/25 122/15 123/23 128/19 135/16 135/22 136/4 137/6 138/23 139/1 139/15 142/17 143/21 144/3 144/9 144/12 144/20 145/9 145/14 145/15 146/1 147/1 147/17 148/2 148/6 148/8 150/5 150/8 150/9 150/12 150/14 150/19 150/23 150/23 150/24 151/4 151/6 151/7 151/15 151/16 151/19 152/6 152/8 153/15 155/7 156/2 156/16 161/11 161/11 161/15 164/14 165/9 167/1 167/20 169/17 170/13 171/20 173/22 174/19 175/14 176/4 176/6 176/18 178/8 178/18 179/23 179/24 183/10 185/21 189/8 189/24 190/4 192/17 194/16 194/22 194/24 195/1 195/4 195/16 195/25 196/11 199/11 202/10 202/15 202/20 202/20 210/8 212/12 212/18 212/24 213/14 213/14 213/19 215/8 217/11 219/7 219/14 219/19 220/10 220/22 221/4 223/21 would've [1] 225/4 wouldn't [7] 33/15 133/9 144/10 145/17 151/18 161/10 202/18 wow [1] 166/14 write [5] 73/5 102/12 127/15 171/17 217/9 writing [6] 61/3 106/10 180/24 205/5 205/7 214/17 written [1] 91/13 wrong [10] 27/23 71/25 72/2 104/5 117/12 147/23 187/5 187/7 199/7 219/6	Y Y'all [1] 46/23 ya'll [1] 91/13 yeah [35] 3/5 3/5 30/25 33/4 38/18 39/5 54/6 54/23 55/2 57/16 67/5 74/7 94/9 103/13 106/15 129/10 130/23 131/3 141/25 153/17 161/25 164/6 165/13 169/23 178/25 184/6 184/9 185/4 197/2 201/12 213/14 216/13 216/19 218/12 220/6 year [24] 12/7 12/8 25/16 26/1 26/11 26/14 43/11 45/20 51/3 57/12 67/24 67/24 68/14 69/13 75/3 76/2 79/7 79/10 124/15 124/21 125/1 157/4 165/25 166/1 Year's [5] 54/21 54/25 55/10 55/11 55/23 years [19] 13/18 18/18 20/4 20/7 44/4 77/1 79/12 124/22 124/24 166/1 166/25 173/21 173/25 187/23 194/8 194/10 204/19 210/24 211/7 yell [6] 27/20 27/24 28/1 28/7 28/11 62/10 yelled [1] 62/15 yelling [4] 34/18 62/22 62/22 62/24 yep [2] 121/23 169/6 yes [223] 7/3 9/14 10/18 12/6 15/7 23/24 25/2 26/18 27/2 27/5 27/9 29/20 30/7 30/25 32/2 33/13 35/7 35/23 36/1 36/4 37/7 37/24 38/5 39/10 39/14 39/21 39/24 40/2 40/5 41/19 42/4 43/3 44/17 44/22 46/3 46/22 47/5 47/15 47/19 48/2 48/12 48/16 48/23 49/10 51/14 51/18 52/23 54/7 54/14 54/20 56/13 57/16 58/11 58/16 60/1 60/22 60/25 61/8 61/16 62/6 62/11 63/8 63/15 63/18 64/8 64/13 67/20 68/22 68/24 69/11 69/14 70/7 70/13 71/5 71/19 72/4

<p>Y</p> <p>yes... [147] 72/6 72/18 73/1 73/10 73/15 73/20 74/2 75/1 76/11 76/21 78/8 78/8 78/11 79/1 79/6 79/9 79/19 79/25 80/11 80/17 80/19 81/9 81/10 81/23 82/1 82/5 82/5 82/8 82/10 82/12 82/14 82/16 85/23 89/13 91/1 91/11 92/8 92/21 94/8 95/2 96/18 100/1 100/2 100/21 100/24 102/7 103/5 105/10 107/10 108/22 111/2 111/16 115/6 116/7 116/11 117/9 122/9 126/20 127/5 127/18 127/23 128/2 128/21 128/24 129/22 129/25 130/3 130/5 130/9 130/16 131/24 132/4 135/1 135/7 135/18 136/10 139/8 139/21 142/3 148/17 148/21 153/20 154/4 154/18 154/20 158/12 159/19 160/24 163/23 163/24 166/20 167/6 167/13 167/16 168/14 172/6 178/8 179/7 182/9 184/8 184/12 184/13 186/8 186/22 193/23 193/25 194/9 194/11 195/5 195/8 197/11 197/19 197/22 198/6 198/9 198/18 198/18 199/9 199/17 199/20 199/23 200/1 200/3 200/6 200/8 200/11 201/2 201/11 202/2 203/7 204/17 205/1 205/7 206/4 206/6 206/8 206/12 206/14 207/22 208/6 208/10 211/14 213/6 214/13 215/6 216/3 217/25</p> <p>yesterday [2] 14/11 85/10</p> <p>yet [14] 7/5 9/8 9/11 16/23 20/20 56/4 59/14 112/9 126/4 126/10 155/4 155/5 158/22 181/11</p> <p>you [929] you'll [2] 92/1 187/17 you're [38] 8/21 20/14 24/2 28/3 28/4 35/5 36/12 51/18 52/7 54/18</p>	<p>82/20 84/16 88/9 92/7 96/16 120/13 120/14 126/23 130/21 136/20 148/6 159/5 169/3 170/3 177/5 188/25 196/24 198/16 198/19 199/7 202/13 205/15 205/23 207/9 207/16 207/18 207/20 222/12</p> <p>you've [19] 9/19 18/19 49/7 58/8 76/19 81/24 88/15 113/24 125/4 127/3 136/11 137/10 139/5 145/15 155/4 208/7 211/12 217/5 222/11</p> <p>you-all [3] 67/21 106/18 172/7</p> <p>young [4] 188/9 201/16 201/18 216/20</p> <p>younger [2] 47/11 47/13</p> <p>your [399] yourself [3] 29/4 32/21 77/16</p> <p>Z</p> <p>zero [8] 22/18 22/18 96/12 96/25 105/13 107/18 120/17 120/21</p> <p>zoom [2] 128/18 175/14</p>			
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